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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION

Initial reports of States parties due in 1995

Addendum

Switzerland*

[13 January 1997]

* This document contains the initial report of Switzerland due on 29 December 1995.

For the core document forming the first part of the reports of States parties, see HRI/CORE/1/Add.29.

The annexes to this report are available for consultation by members of the Committee in the Secretariat.

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CONTENTS

	Paragraphs	Page
Introduction	1 - 3	4
PART 1: OVERVIEW OF SWISS POLICY TO COMBAT RACIAL DISCRIMINATION		
I. PRELIMINARY NOTE	4	4
II. FOREIGN POPULATION	5 - 26	4
A. General information and statistical methods	5 - 12	4
B. Statistical indicators	13 - 18	6
C. Developments in the last 10 years	19 - 26	8
III. CULTURAL AND RELIGIOUS MINORITIES	27 - 32	10
A. General information	27	10
B. "Jenisch" minority	28	11
C. Linguistic minorities	29 - 31	11
D. Religious minorities	32	12
IV. CONSTITUTIONAL AND LEGISLATIVE FRAMEWORK FOR ACTION TO COMBAT RACISM	33 - 37	12
Article 4 of the Federal Constitution	33 - 37	12
V. GENERAL POLICY FOR COMBATING RACIAL DISCRIMINATION	38 - 47	13
A. National minorities	39 - 42	14
B. Foreign population	43 - 46	15
C. Anti-racism campaigns	47	16
PART II: ANALYSIS OF ARTICLES 2 TO 7 OF THE CONVENTION		
I. CONDEMNATION OF RACIAL DISCRIMINATION (ART. 2 OF THE CONVENTION)	48 - 60	16
A. General information	48 - 49	16
B. Article 4 of the Federal Constitution and respect for the principle of equal treatment by the State authorities (art. 2, para. 1 (a) and (b))	50 - 51	17

CONTENTS (continued)

		Paragraphs	Page
	C. The problem of discrimination among foreigners and the reservation made by Switzerland in respect of its immigration policy (art. 2, para. 1 (a))	52 - 56	17
	D. The principle of equal treatment and its application to relations between individuals (art. 2, para. 1 (c) and (d))	57 - 59	19
	E. Encouragement of organizations and movements promoting integration	60	20
II.	CONDEMNATION OF APARTHEID (ART. 3 OF THE CONVENTION)	61 - 63	20
III.	MEASURES TO MAKE CERTAIN ACTS OF RACIAL DISCRIMINATION PUNISHABLE BY LAW (ART. 4 OF THE CONVENTION)	64 - 72	21
IV.	ELIMINATION OF RACIAL DISCRIMINATION, WITH PARTICULAR REFERENCE TO SPECIFIC HUMAN RIGHTS (ART. 5 OF THE CONVENTION)	73 - 166	23
	A. Right to equal treatment before the tribunals and all other organs administering justice (art. 5 (a))	75 - 81	23
	B. Right to security and protection by the State (art. 5 (b))	82 - 84	25
	C. Political rights (art. 5 (c))	85 - 103	25
	D. Other civil rights (art. 5 (d))	104 - 150	30
	E. Economic, social and cultural rights (art. 5 (e))	151 - 166	42
V.	EFFECTIVE PROTECTION AND REMEDIES (ART. 6 OF THE CONVENTION)	167	46
VI.	MEASURES CONCERNING EDUCATION AND TEACHING, CULTURE AND INFORMATION (ART. 7 OF THE CONVENTION)	168 - 201	46
	A. Introduction	168 - 178	46
	B. Education and teaching	179 - 185	49
	C. Culture	186 - 192	51
	D. Information	193 - 201	52
List of annexes			62

Introduction

1. Switzerland acceded to the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (hereafter "the Convention") on 29 November 1994. The Convention entered into force for Switzerland on 29 December 1994. Under article 9 of the Convention, the States parties undertake to submit periodic reports "on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of this Convention". The initial report of Switzerland to the Committee on the Elimination of Racial Discrimination (hereafter "the Committee") has been prepared in accordance with the Committee's guidelines as contained in document CERD/C/70/Rev.3 of 23 July 1993.

2. The initial report, supplemented by annexes, 1/ is in fact comprised of two separate documents: (a) the core document forming the first part of the reports of States parties (HRI/CORE/1/Add.29 of 2 July 1993); and (b) the present document, which is in two parts: a general part containing information on the structure of the country's population and on general policy to combat racial discrimination; and a special part with commentaries relating to articles 2 to 7 of the Convention.

3. The report was prepared in a collaborative effort by the Directorate for Public International Law and the Federal Offices for justice, foreigners, refugees, culture and statistics. The Federal Commission against Racism and the Federal Commissions on foreigners and refugees were invited to comment on the report. This report was approved by the Federal Council on 18 December 1996.

PART I: OVERVIEW OF SWISS POLICY TO COMBAT RACIAL DISCRIMINATION

I. PRELIMINARY NOTE

4. This first part gives information on the resident population in Switzerland. It supplements and updates the information contained in the core document (HRI/CORE/1/Add.29) and then provides general indications about the relevant constitutional and legislative provisions and about the policy conducted by the Swiss authorities to combat racial discrimination. This information is supplemented, where appropriate, by commentaries relating to articles 2 to 7 of the Convention, which are dealt with in part II of the report.

II. FOREIGN POPULATION

A. General information and statistical methods

5. In 1995, the population of Switzerland stood at 7,080,948, of whom 19.6 per cent were foreigners. 2/ In the course of 1995, 17,021 requests for asylum were submitted by applicants from 140 countries. The applicants come largely from the former Yugoslavia (Serbia and Montenegro), Bosnia and Herzegovina, Sri Lanka and Turkey.

6. Statistics relating to the population in Switzerland are derived in part from the federal population census, which gives details about the country of origin and residence status of foreigners and the place of birth, mother tongue and religion of the inhabitants, and also in part from the annual bulletin of statistics on the status of the foreign population, which is compiled with data from the Federal Office for Foreigners (sex, age, marital status, residence status, place of residence) and from a survey of international civil servants. The principal and most complete source of data on foreigners in Switzerland, however, is the Central Register of Foreigners (RCE). This is a computerized register kept by the Federal Office for Foreigners (OFE) in cooperation with the federal services concerned. The RCE makes it possible to produce statistics on foreigners, to carry out the checks prescribed by the Federal Act on the Residence and Establishment of Foreigners, of 26 March 1931 (hereafter LSEE), 3/ and to facilitate the work of the police authorities responsible for foreigners. In the case of asylum-seekers, it is the Federal Office for Refugees which registers and keeps statistics on applications for asylum.

1. Statistical base of the Federal Statistical Office

7. The base used for gathering statistics by the Federal Statistical Office depends:

(a) for the census, in large part on previous censuses. Some experts are, however, also consulted;

(b) for the annual statistical bulletin on the status of the population (ESPOP), on the federal legislation relating to the immigration of persons of foreign nationality.

8. The questionnaire for the federal population census does not give any predefined category for language (other than the four national languages and English) or religion (other than the Reformed Evangelical Church and the Roman Catholic Church). The replies are therefore very detailed. They are later grouped during the processing of the data (into 16 categories for religion and 28 for language). Most published tables, however, present a smaller number of categories. For foreigners, the census results either present the various countries of origin in a detailed manner, or else group foreigners by region or continent, largely in accordance with the United Nations classification.

2. Statistical base of the Federal Office for Foreigners

9. On the basis of the Ordinance on the Central Register of Foreigners, of 23 November 1994, 4/ and of the Federal Act on the Residence and Establishment of Foreigners, of 26 March 1931, the classifications include nationality, sex, marital status, age, occupation, branch of activity, length of residence, etc. Another criterion is the category of the residence permit: seasonal permits (A permits); annual permits (B permits); establishment permits (C permits); permits for border workers (G permits); and short-term residence permits (L permits). Data on cultural, religious and ethnic groups and on family composition, social status, unemployment rate and level of education are not kept in the Central Register of Foreigners.

3. Statistical base of the Federal Office for Refugees

10. The statistics of the Federal Office for Refugees use relevant categories in the domain of asylum. Data are kept on nationalities and, since 1 January 1993, ethnic groups for some countries. These categories do not provide details of the age, family composition or economic and social status of the persons concerned. Since 1993, the primary data of the Federal Office for Refugees have been broken down by sex.

4. Frequency and reliability of the statistics

11. The statistics of the Federal Statistical Office are published each year (annual bulletin on the status of the population). The statistics of the Federal Office for Foreigners are produced monthly and published in full three times a year. Those of the Federal Office for Refugees are made available monthly (for official use). The publication for general distribution appears three times a year.

12. Completion of the census questionnaire (printed in nine languages) is obligatory, as is the registration of foreigners and asylum-seekers. Foreigners living illegally in Switzerland are obviously for the most part not covered by the statistics. The reliability of the statistics is good. A comparison between the census figures and those of the Central Register of Foreigners and of the annual statistical bulletin on the status of the population shows a good match in terms of overall results.

B. Statistical indicators

13. The tables mentioned below (see annexes 1 to 8) show the principal results of the 1990 census, although the figures no longer fully reflect the current situation, particularly in respect of the number of persons unemployed. These tables provide the following statistics:

0.101-00: Characteristics such as age, religion, language and size of household, for Swiss and foreigners

0.103-00.01: Characteristics of employment status and level of education, for Swiss and foreigners

1.113-00: Countries of origin of foreigners and residence status, by sex

2.003-00.07: Main language for the foreign population

2.105-00.01: Countries of origin of foreigners and religious affiliation

5.141-00.03: Number of foreigners economically active; socio-professional groups and length of employment

7.115-00.02: Socio-professional groups and types of household: Swiss

7.115-00.03: Socio-professional groups and types of household: foreigners.

14. These statistical data should be supplemented and updated with the following figures supplied by the Federal Office for Foreigners:

Permanently resident foreign population (length of stay more than 12 months) by country of origin, at end December 1995

Italy	358 933
Former Yugoslavia	294 217
Portugal	134 827
Spain	101 412
Germany	90 903
Turkey	78 615
France	53 612
Austria	28 109
United Kingdom	18 384
Netherlands	13 622
United States of America	11 383

Division by continents

Europe	1 221 495
of which: EU and EFTA countries	827 891
Africa	24 297
America	35 128
Asia	47 594
Oceania	1 674
No nationality, State unknown	386
Total	1 330 574
(18.9% of the total population)	

1. Age structure of the permanently resident population of foreign nationality

15. At end 1995, 69 per cent of the resident population of foreign nationality (919,476) consisted of persons who were between 20 and 64 years old and thus of an age to pursue a gainful occupation. Children and young people under 19 years of age, totalling 353,193, or 27 per cent, came in second place, while persons aged 65 or over (mostly retired persons) came in third place, totalling 60,905 or about 5 per cent, thus representing only a small proportion of the population.

16. The age structure of the foreign population differed appreciably from that of the Swiss population. The under-19 and 20-64 age groups were markedly smaller in number among the Swiss than among foreigners. On the other hand, the number of Swiss of retirement age was several times higher, in proportional terms, than that of foreigners.

2. Sex and marital status

17. Of the 1,330,574 foreigners registered at end 1995, 721,836 were male and 608,738 were female. In all, 544,461 were single, 705,902 were married, 25,187 were widowed and 45,024 were divorced. Single persons included 283,022 children under 16 years of age.

3. Recognized refugees

18. The total number of foreigners includes 24,581 refugees to whom Switzerland has granted asylum. These refugees consist, inter alia, of 6,529 former Yugoslavs, 4,197 Vietnamese, 3,750 Turks and 1,246 Cambodians. The breakdown by continent indicates that, at end 1995, 56 per cent were from Europe, 37 per cent from Asia and 7 per cent from other continents.

C. Developments in the last 10 years

19. The tables of the Federal Statistical Office given below (see annexes 9 and 10) show the main changes which have occurred by period of 10 years, as reflected in the census. It may be noted in particular that the composition of the foreign population has varied greatly since the beginning of the century and so, therefore, has its linguistic and religious composition.

1.219-01: Number of foreigners and countries of origin since 1900.

2.201-01: Religious affiliation.

20. These tables should be supplemented and updated with the following statistics provided by the Federal Office for Foreigners:

Immigration in 1995 to take up residence for more than 12 months, by country of origin:

Former Yugoslavia	24 478
Portugal	10 362
Germany	8 741
Italy	7 239
France	5 246
Turkey	3 818
Spain	2 957
United States of America	2 864
United Kingdom	2 611
Austria	1 542
Netherlands	1 448
Europe, total	75 291
of which: EU and EFTA countries	43 933
Africa	3 566
Asia	7 098
America	7 844
Oceania	449
No nationality, State unknown	20
Total	94 268

In 1995, 94,268 foreigners entered Switzerland to take up residence for more than 12 months; 32,904 new immigrants were pursuing a gainful occupation.

21. The total of new immigrants may be broken down as follows: 34,931 (or 37.1 per cent) entered for the purpose of family reunification, 15,174 (16.1 per cent) were admitted under the cantonal or federal quotas, 5/ 6,374 (6.8 per cent) had their seasonal permits converted to annual residence permits, 10,000 (10.6 per cent) were schoolchildren or students, 1,787 (1.9 per cent) obtained residence permits on humanitarian grounds and the remaining 26,002 (27.5 per cent) consisted of Swiss returning to the country, children placed with a view to adoption, recognized refugees, retired persons and rentiers, and persons of foreign nationality who had married Swiss nationals.

1. Change in the number of recognized refugees in 1995

22. The number of refugees (excluding asylum seekers) declined by 2,667 (9.8 per cent) to 24,581 between end 1994 and end 1995.

2. Total resident population of foreign nationality in 1995

23. Relative to end 1994, the permanently resident population of foreign nationality increased overall by 30,485 or 2.3 per cent (whereas the increase in the previous year had been 39,806, or 3.2 per cent). With 21,771 persons (71.4 per cent of the total), nationals of the former Yugoslavia constitute the group which has grown the most in numerical terms.

3. Change in the permanently resident population of foreign nationality since 1985

24. After a decline between 1975 and 1980, largely due to the economic recession, the foreign population began to grow again during the 1980s, at first moderately and then, after 1985, strongly; it increased between 1980 and 1984 by 48,000 (+5.4 per cent) and between 1985 and 1989 by 108,000 (+11.6 per cent). At the end of that period it totalled 1,040,000. During the last six years (1990-1995) it has risen by a further 291,000 (+28 per cent relative to end 1990). The total for end December 1995 represents a record level. Since 1992, the upward trend has, however, been less pronounced.

25. The proportion of the permanently resident population of foreign nationality in Switzerland relative to the country's total permanently resident population increased from 14.6 per cent in 1985 to 18.9 per cent in 1995. During that period, an increase of 391,000 was recorded. The increase was larger still among the economically active resident population of foreign nationality, which grew by 180,000 between 1985 and 1995 to reach a total of 729,000.

26. It should be noted that with a foreign population constituting 18.9 per cent of the total population, Switzerland is (after Liechtenstein and Luxembourg) the country with the largest proportion of foreign residents in Europe. A relatively restrictive naturalization policy undoubtedly has some influence on the large proportion of the foreign population in international terms. In this regard, it should be pointed out that a revision of the Federal Constitution concerning acquisition and loss of Swiss nationality was accepted by the people, but rejected by a majority of the cantons on 12 June 1994. It had been designed, in particular, to enable foreigners who had spent their childhood in the country to avail themselves of facilitated naturalization, which reduces the time ordinarily required for that procedure.

III. CULTURAL AND RELIGIOUS MINORITIES

A. General information

27. The plurality of languages and religions in Switzerland has its roots in history. It is common political beliefs and ideals - such as federalism, the

rule of law and democracy - that, more than linguistic or cultural unity, form the cement of federal unity. Moreover, the federal State is made up of entities - the cantons - which pre-dated it. This overlapping of administrative, linguistic and cultural boundaries makes it difficult for any one group, even a group with a strong majority such as the German-speaking Swiss, to predominate. Also, by fostering understanding and mutual respect among individuals within the federal State, through respect for territorial integrity and national unity, Swiss federalism contributes in a unique and important way to respect for minorities. 6/

B. "Jenisch" minority

28. Switzerland does not have ethnic minorities in the strict sense. The only group that might be classified in that category is the nomads or "people of the road". No detailed breakdown of the nomadic people living in Switzerland is available. That population is estimated at around 25,000, of whom only 4,000-5,000 have not become sedentary. 7/ The great majority of the nomads in Switzerland regard themselves as being of "jenisch" stock, although some are related to the Roma or the Sinti.

C. Linguistic minorities

29. Switzerland has four national and official languages. In the referendum of 10 March 1996, the people and the cantons adopted a new article of the Constitution relating to languages (art. 116 of the Federal Constitution). This provision supplements old article 116 of the Federal Constitution, which had already enumerated the four national languages, by introducing a reference to arrangements for the Confederation to promote languages. These consist in measures aimed at fostering understanding and exchanges between the country's linguistic communities, as well as support for the cantons of Ticino and Graubünden to maintain and promote Italian and Rhaeto-Romansch. Along with German, French and Italian, Rhaeto-Romansch now has the status of a national and official language of the Confederation. This means that Rhaeto-Romansch-speakers will henceforth be able to address the federal authorities in that language. Use of Rhaeto-Romansch at the federal level and the detailed federal arrangements to promote minority languages will be regulated by statute. The new Federal Act on financial assistance to maintain and promote the Rhaeto-Romansch and Italian languages and culture was passed on 6 October 1995 by the Federal Parliament.

30. Data on mother tongue (i.e. the language in which a person thinks and is most proficient) gathered during the 1990 census provide the following information: German is spoken by 63.3 per cent of the population, French by 19.2 per cent, Italian by 7.6 per cent and Rhaeto-Romansch by 0.6 per cent. Approximately 8.9 per cent of the population have a mother tongue which is not one of the four national languages. Of the 26 cantons and semi-cantons, 17 are German-speaking, 4 are French-speaking, 1 is Italian-speaking (with a small German-speaking minority) and 3 are bilingual - the canton of Bern, with a German-speaking majority, and the cantons of Fribourg and Valais, with

French-speaking majorities. The canton of Graubünden is trilingual, with a German-speaking majority. The German, French and Italian linguistic zones are relatively stable. The number of German speakers has declined by 5 per cent and that of Italian speakers by 2 per cent in the last 30 years, while the number of French speakers increased by 0.5 per cent during the same period. Rhaeto-Romansch is steadily losing ground, to the point where its existence is threatened.

31. In the multilingual cantons, various approaches have been adopted to ensure the coexistence and equal rights of linguistic communities. In most cantons, responsibility for education and cultural policy has devolved to the districts or communes. The same applies to the judicial system, which is decentralized to the level of the districts, with the cantonal courts giving their rulings in the language used in first instance. The Federal Tribunal, for its part, deals with civil and administrative appeals in the language of the canton in which the case was originally heard, and in criminal proceedings it uses the language of the accused, provided that it is one of the official languages.

D. Religious minorities

32. With regard to religious denominations, the resident population is 40 per cent Protestant, 46.7 per cent Roman Catholic, 0.2 per cent Old Catholic, 2.2 per cent Muslim, 1 per cent Orthodox and 0.3 per cent Jewish, while 7.4 per cent are persons of no religious denomination. There are also some very small denominational groups (Mormons, etc.) for which no individual statistics are available and which together account for about 2.8 per cent of the population.

IV. CONSTITUTIONAL AND LEGISLATIVE FRAMEWORK FOR ACTION TO COMBAT RACISM

Article 4 of the Federal Constitution

33. Article 4, paragraph 1, of the Constitution provides that all Swiss citizens are equal before the law. The second sentence of that paragraph gives the historical context for this provision, which was first formulated in 1848: "In Switzerland, there shall be no subjects, nor privileges of place, birth, person or family." Paragraph 2 concerns equality between women and men, which is outside the scope of the Convention.

34. The duty of ensuring equal treatment is closely linked to the protection of the dignity of all human beings, one of the underlying principles of human rights. Human dignity and, hence, the protection of human rights are by definition due equally to all people. In accordance with this principle, the obligation to ensure equality before the law prohibits the State from taking decisions "in consideration of the person" or which favour or discriminate against certain persons or groups of persons. The duty to ensure equality before the law applies both to legislation and to application of the law.

While it does not call for rigorously egalitarian treatment, it does authorize unequal treatment only when duly justified; at times it even postulates such inequalities. The obligation to ensure equality before the law therefore guarantees a legal order, based on subtle, objectively defined distinctions. 8/ The Federal Tribunal expresses the same idea when it states that the principle of equality before the law is violated, inter alia, when identical situations are not treated in the same manner, as their similarity would dictate, or when different situations are not treated differently, as their differences would dictate. 9/ Consequently, positive inequality of treatment - specific, temporary measures taken on behalf of particularly disadvantaged groups, and intended to correct previous or current discrimination - is not only lawful from the standpoint of constitutional law, but may even be imperative under certain circumstances, which is in any case in accordance with article 1, paragraph 4, of the Convention.

35. Although article 4 of the Constitution does not expressly mention "race" or skin colour, these distinguishing criteria are incontestably the implicit targets of the prohibition against discrimination. The prohibition of racial discrimination is now considered to be one of the essential elements of the principle of equal treatment and enjoys absolute protection. 10/ The Federal Tribunal in fact declared the discriminatory legislation of the Third Reich to be contrary to Swiss public order and rejected its applicability in Switzerland. 11/

36. Contrary to the letter of article 4 of the Constitution, not only Swiss citizens, but foreigners as well, enjoy this right. 12/ Equality is a universally applicable human right. Being a foreigner may, however, constitute objective grounds for a difference in treatment where Swiss nationality plays a cardinal role in the matter to be regulated. This applies in particular to civic rights and duties. Similarly, under article 69 ter of the Constitution, the Confederation is entitled to legislate on the entry, exit, residence and establishment of foreigners. 13/

37. In June 1995, the Federal Council held wide-ranging consultations on a draft reform of the Federal Constitution. The relevant part of article 7 of the draft reads as follows: "Everyone is equal before the law. No one should be subjected to discrimination on the grounds of his origin, sex, race, language, social status or religious, philosophical or political beliefs."

V. GENERAL POLICY FOR COMBATING RACIAL DISCRIMINATION

38. The definition of a general policy for combating racism must take account of the fact that racism can affect both foreigners and Swiss citizens who are distinguished from the majority of the population by certain external characteristics (language, religion, lifestyle). The objectives and instruments of the policy on the status of the four national languages, of the policy towards foreigners (issues of migration, admission and integration policies), anti-racism campaigns and the establishment of a Federal Commission on Racism should be cited in this regard. 14/

A. National minorities

1. Linguistic minorities

39. The existence of four linguistic communities is considered to be one of the constituent elements of Switzerland. The choice of a federal State structure within cultural plurality implies respect and tolerance for linguistic minorities. This policy is reflected in the Federal Constitution's recognition of the national language status of German, French, Italian and Rhaeto-Romanche. To this must be added the objective of promoting minority languages. It will be recalled that in March 1996, a new article 116 of the Federal Constitution, on official and national languages, was adopted by the people and the cantons. 15/ Where the media are concerned, the Swiss Radio and Television Corporation (SSR) is divided into three regional channels - German-speaking, French-speaking and Italian-speaking - each with its own programmes. The Romanche minority is given air time on the German-speaking channel.

2. The "Jenisch" minority

40. While it is true that, as elsewhere in Europe, nomads living in Switzerland have suffered harassment or even persecution, 16/ in recent years their relations with the authorities have improved, in terms of mutual understanding and cooperation. One turning point was in 1972, the year when the mutual aid association Children of the Road, founded in 1926 by the Pro Juventute foundation, was disbanded. It was the abuses committed in the name of the protection of nomadic children (enforced settlement of children, separation of 619 children from their families 17/) that led to the disbanding of the organization. Pro Juventute has officially apologized to the nomad community and set about compensating the victims. A total amount of 11 million Swiss francs has been distributed among almost 1,900 victims.

41. Nomads living in Switzerland generally have Swiss nationality and enjoy all the rights guaranteed by the Constitution, domestic law and the relevant international treaties, without discrimination. In particular, they are entitled to have their own cultural life and to speak their own language. It cannot be denied, however, that the fact that their lifestyle is not adapted to the public infrastructure (schools; cantonal labour regulations; social insurance; specially adapted sites; access to communal public infrastructure facilities, etc.) makes it difficult for them to exercise some of their rights, especially those of a social, economic or cultural nature. In its 1983 report on "Nomads in Switzerland", the Research Commission set up by the Federal Department of Justice and Police analyses this situation, which falls chiefly within the competence of the communes, and the problems it engenders. It also proposes a series of measures for improving matters.

42. In a petition sent to the Federal Council in November 1993, the "people of the road" demanded official recognition, special sites to accommodate them and the conclusion of an intercantonal agreement allowing them to pursue their activities beyond cantonal borders. (Itinerant tradesman's licences are issued by each canton and are valid only within its territory.) For several years, the Confederation has given financial support to the Swiss umbrella

association of nomads or "people of the road". Parliament is currently discussing the creation of a foundation entitled "Ensuring the future of the Swiss travellers", which would deal with the group's specific problems.

B. Foreign population

1. Migration issues

43. On issues of migration, emphasis is placed on the development and realization of pan-European strategies for dealing with growing migratory pressures. A coordinated approach by European States appears vital, especially in the following areas:

(a) Measures to combat the causes of migratory movements in the States of emigration;

(b) Measures to combat illegal immigration; and

(c) Measures to improve the exchange of information.

Swiss immigration policy will be discussed in greater detail in part II, chapter I, of this report, on article 2 of the Convention. It should nonetheless be pointed out that this policy is currently being reviewed by the Federal Council in order to define the purposes, content and instruments of Switzerland's future immigration policy.

2. Admission and quota policy

44. In order to ensure a balance between the Swiss and resident foreign populations, the number of new foreign immigrants admitted into the country is restricted. Residence permits for engaging in gainful activity are subject to quotas. 18/ This policy, intended to maintain a balance between the native and foreign populations, to some extent makes it possible to avoid the manifestations of racism or xenophobia.

3. Integration policy

45. It is in this area that the legal and non-legal approaches most converge. From the legal standpoint, the fact that the longer a foreigner remains in the country, the stronger his legal status has to be considered. The establishment permit (72 per cent of resident foreigners) is generally granted after a stay in Switzerland of 10 years (five years under some bilateral treaties). It affords the foreigner geographical and occupational mobility, as well as increased security in terms of his right to reside in the country. From that point on, with the exception of the right to vote and to stand for election, foreigners receive practically equal treatment with nationals. The security of residence also helps to strengthen the desire to integrate. The legal aspect is therefore an important factor in the promotion of equal opportunity. From the non-legal standpoint, social integration occurs above all at the local level, and is a matter for the cantons and communes. The Federal Commission on Foreigners (CFE), which will be discussed in part III of this report, in the chapter on article 7 of the Convention, plays a major role in this regard.

46. By "integration" is meant both the reception given the foreigner within the Swiss community and his ability to become a part of the social setting, without however giving up his own cultural origins and nationality. Foreigners must be able to forge relations with the native population and to participate in their social life. The process of integration involves a willingness on the part of both immigrants and the native population to be open and accepting towards one another, while respecting the individuality of each (integration is therefore by no means synonymous with assimilation). Successful integration depends very much on the frequency and diversity of social contacts at the workplace and in leisure pursuits. The Federal Council has frequently taken this position on integration, which is not contested by foreigners living in Switzerland. Foreigners do, however, sometimes criticize the inadequate reflection of this political will in daily life. Solutions must first be sought in those areas where the coexistence of Swiss and foreigners gives rise to human, cultural, social and economic problems - in business, the workplace, schools, residential areas, neighbourhoods, parishes, organizations and associations. It follows that the communes have an important role to play in executing this policy. The scope of the activities of cantonal, regional and communal services providing assistance to foreigners and local advisory commissions of foreigners should be stressed in this context. Criticism has also sometimes been levelled against the naturalization procedure, which is deemed to be too long and too selective.

C. Anti-racism campaigns

47. It will be recalled that Switzerland takes an active part in the implementation of the resolutions adopted at Vienna by the Heads of State and Government of the member States of the Council of Europe, dealing inter alia with the creation of the Council's Plan of Action on combating racism, xenophobia, antisemitism and intolerance. At the national level, the Federal Council has set up a national committee for the organization in Switzerland of the European Youth Campaign against Racism, Anti-Semitism and Intolerance called for in the Plan of Action. The campaign was successfully conducted in 1995. A national anti-racism campaign had also been organized in 1990 by the Swiss Council on Youth Activities, with the support of the Confederation.

PART II: ANALYSIS OF ARTICLES 2 TO 7 OF THE CONVENTION

I. CONDEMNATION OF RACIAL DISCRIMINATION (ART. 2 OF THE CONVENTION)

A. General information

48. The obligations of States parties to the Convention are defined generally in article 2 and more specifically in articles 3-7. Under article 2, paragraph 1, States parties condemn racial discrimination and undertake to pursue a policy of eliminating racial discrimination and promoting understanding among all "races". Paragraph 2, which takes as its starting point the lawfulness of positive discrimination as defined in article 1, obliges States parties, as required by circumstances, to take special concrete measures to ensure the development and protection of certain racial groups or individuals belonging to them.

49. Given the nature of article 2 of the Convention, these remarks will be limited to a general overview and will be developed in detail, as required, in the chapters on articles 3-7. The reasons for Switzerland's reservation to article 2, paragraph 1 (a), of the Convention will, however, be explained in detail.

B. Article 4 of the Federal Constitution and respect for the principle of equal treatment by State authorities (art. 2, para. 1 (a) and (b))

50. As stated in part I of this report, article 4, paragraph 1, of the Federal Constitution provides that all Swiss are equal before the law. Case law extends the application of the principle to foreigners as well. According to this principle, the obligation of ensuring equality before the law prohibits the State from taking decisions "in consideration of the person" or from favouring or discriminating against certain persons or groups of persons. This duty applies both to legislation and to application of the law. Neither the law nor the Convention, however, calls for rigorously egalitarian treatment. Unequal treatment is authorized only when duly justified; at times the duty even postulates such inequalities. The obligation to ensure equality before the law therefore guarantees a legal order based on subtle, objectively defined distinctions. 19/ It follows that positive inequality of treatment of the sort called for by the Convention - i.e. specific measures taken on behalf of particularly disadvantaged groups, and intended to correct previous or current discrimination - is not only lawful from the standpoint of constitutional law, but may even be imperative under certain circumstances. 20/

51. Even though its formulation is restrictive, according to the legal doctrine and case law, article 4 of the Federal Constitution is addressed not only to the authorities responsible for applying the law, but also to the legislator. 21/ However, given the relatively abstract nature of the Federal Tribunal's pronouncement on equal treatment, the legislator still has a great deal of latitude in drafting. 22/

C. The problem of discrimination among foreigners and the reservation made by Switzerland in respect of its immigration policy (art. 2, para. 1 (a))

52. Upon its accession to the Convention, Switzerland made a reservation to the effect that it reserves the right to apply its legal provisions relating to the admission of foreigners to the Swiss labour market. In this way, Switzerland, whose foreign population - about 19 per cent of the total - is one of the largest in Europe (along with those of Luxembourg and Liechtenstein), like most economically advanced countries, intends to preserve some freedom of action as to the admission of foreign workers to its labour market, for reasons that are economic, as well as political and social.

53. Swiss policy towards foreigners is based on the principle of limiting the number of foreigners and of integrating those foreigners who live and work

in Switzerland. While the admission of students and trainees, particularly in the field of technical cooperation, is based on the same criteria as those used for all foreign nationals, it is the system of "traditional recruitment country" that is applied for admission to the labour market.

54. The definition of these countries takes into account the ability of their workforce to integrate into Swiss society, the importance of Switzerland's relations with them, and the current European process of integration. Swiss policy is based on a "three circle" model. Persons from countries belonging to the inner circle (member States of the European Union and European Free Trade Association) enjoy a fairly relaxed regime. Persons belonging to the middle circle (today, basically the United States and Canada) can be recruited within a limited framework and enjoy certain facilities. Persons belonging to the outer circle, or coming from non-traditional recruitment countries, are admitted on an exceptional basis only, if they are highly skilled or have come to do a training course. Following are the criteria for classifying a country in the middle or outer circle:

(a) Respect for human rights;

(b) A culture marked by European ideas, in the broadest sense of the term, and with living conditions similar to our own;

(c) A long history of stable trade and economic relations;

(d) Traditionally good relations with Switzerland in the field of labour recruitment;

(e) Economic need for specialists from these countries;

(f) Economic need for skilled workers from these countries who have been trained in Europe.

55. As regards the International Convention on the Elimination of All Forms of Racial Discrimination, the favoured treatment granted nationals of western European countries within the framework of the even closer trade relations that might develop in the context of current relations between Switzerland and the European Union, particularly following the sectoral negotiations now under way, does not pose any problems of principle. Although the Convention does not contain any general reservations on special treaties according privileges, such agreements are, in the opinion of the Swiss Federal Council, compatible with the Convention insofar as they are made within the framework of close economic alliances and on the basis of reciprocity.

56. The criterion of capacity for integration, when applied to persons hoping to engage in gainful activity in Switzerland, is not intended to be racially discriminatory in any way. It certainly makes admission more difficult for persons belonging to other ethnic groups or "races", because of their limited capacity for integration. However, the Federal Council is convinced that Switzerland, like most other countries with above-average economic development, must in principle maintain its restrictive policy

towards the admission of foreigners to the increasingly specialized Swiss labour market. The capacity of foreign nationals to integrate into Swiss society is an important prerequisite for their being accepted and welcomed by that society. This is why, in the hope of avoiding any uncertainty, Switzerland made its reservation. 23/

D. The principle of equal treatment and its application to relations between individuals (art. 2, para. 1 (c) and (d))

57. According to traditional case law and legal doctrine, the prohibition of discrimination, as defined in article 4 of the Federal Constitution, cannot in principle have a direct effect on relations between individuals - for example, by requiring equal treatment in the conclusion of contracts - except in certain special cases. 24/ On the other hand, most recent works on Swiss law, and the Federal Tribunal, recognize the indirect horizontal effect of the individual freedoms proclaimed in the Federal Constitution. 25/ This means that, when they have to interpret imprecise legal concepts, the authorities responsible for applying the law must turn, for example, to the principle of the prohibition against discrimination, which is a fundamental right. Among the norms of private law that lend themselves particularly well to such an interpretation of the prohibition against discrimination, the legal writings cite articles 27 and 28 of the Civil Code 26/ (CCS), on the protection of the individual, article 2 CCS on the abuse of right, articles 19 and 20 of the Code of Obligations (CO) on the nullity of a contract whose purpose is something impossible, unlawful or immoral, the provisions on the protection of tenants in case of cancellation of a lease (art. 271 CO) and the provisions of labour law on protection of the worker's status (art. 328 CO) and on protection against wrongful dismissal (art. 336 CO). By acceding to the Convention, Switzerland can be considered to have conferred special importance on the prohibition against discrimination in the interpretation of such provisions of private law.

58. It must nonetheless be emphasized that, with very few exceptions, Swiss private law does not recognize an obligation to enter into a contract. In their private contractual relations, so long as no criminal offence is being committed, individuals may conclude employment contracts or rental agreements, for example, with parties of their choosing, notwithstanding the prohibition against racial discrimination. A provision of private law prohibiting individuals from applying distinctions based on "race" in their private relations, would encounter considerable problems of practical application, insofar as such behaviour would be difficult to prove. The new article 261 bis of the Penal Code, which will be discussed in greater detail elsewhere in this report (para. 65 et seq.), will now make it possible to ensure that the prohibition against racial discrimination is respected in certain public sectors, even by individuals, in cases where private autonomy must take second place to the protection of human dignity. Even in contractual relations of a purely private nature, behaviour that publicly harms the dignity of a potential co-contracting party can be penalized under the new provision.

59. In conformity with the Constitution's conception of fundamental rights, constitutional rights and obligations under international law, such as the prohibition against racial discrimination, confer a permanent mandate on the legislator, that of rendering abstract individual freedoms increasingly concrete. In future revisions of private law, the Federal Council will endeavour to take into account the principles embodied in the Convention in the most appropriate manner.

E. Encouragement of organizations and movements promoting integration

60. This issue will be dealt with below, in the chapter on article 7 of the Convention (positive measures against racist behaviour, paras. 168-201).

II. CONDEMNATION OF APARTHEID (ART. 3 OF THE CONVENTION)

61. Switzerland, which unequivocally condemned the apartheid regime of South Africa, contributed to the development of democracy in that country through a programme of positive measures and helped finance the historic meeting of 1987 between representatives of the African National Congress (ANC) and the South African economy. In December 1993, at a crucial stage in the transition to democracy, the Swiss Government, in cooperation with the Federalism Institute of the University of Fribourg, organized major debates on constitutional questions between representatives of the ANC and of the Afrikaaner Volksfront. In July 1994, Switzerland also organized an extended round table on constitutional questions, in which representatives of the major South African political parties participated. Swiss support for the South African elections totalled 1.7 million Swiss francs, and 100 Swiss election monitors were sent to observe the April 1994 elections.

62. Between 1986 and early 1994, Switzerland contributed no less than 50 million Swiss francs to these projects. For the period 1995-1999, the amount allocated to development aid for South Africa is expected to reach 80 million Swiss francs. These programmes of "positive measures", of limited duration, are being carried out in cooperation with the competent offices of the Swiss administration, and in agreement with local authorities, with a view to promoting synergy between measures of local, regional and international scope. A total of 60 million Swiss francs is earmarked for cooperation for development (support for socio-economic reform and reform of the State structure, the rule of law and democratization, etc.).

63. The Swiss Government actively supports South Africa's Reconstruction and Development Programme. In addition, through the 20 million Swiss francs made available for the period 1995-1999, it is participating in bilateral and multilateral programmes of measures for promoting peace and democracy in South Africa. The Federal Office for External Economic Affairs (OFAEE) is planning to contribute 10 million Swiss francs over a five-year period to support economic reform in South Africa.

III. MEASURES TO MAKE CERTAIN ACTS OF RACIAL DISCRIMINATION PUNISHABLE BY LAW (ART. 4 OF THE CONVENTION)

64. Article 4 (a) of the Convention requires States to declare the following acts punishable by law:

(a) dissemination of ideas based on racial superiority or hatred;

(b) incitement to racial discrimination;

(c) acts of violence or incitement to such acts against any race or group;

(d) provision of assistance to racist activities.

65. With the adoption of article 261 bis (1), (2) and (3) of the Penal Code, 27/ Switzerland added to its domestic legal system a provision which takes into account the first two requirements mentioned above. In the process, the legislature attempted to bear in mind the rights firmly anchored in the Federal Constitution, the desired changes in criminal law and the basic principles that govern the drafting of the provisions thereof. It did so to the full extent necessary and in a manner compatible with the scope and purpose of the Convention.

66. As is clear from the requirement that an act, to be a criminal offence, must take place in public, and from the fact that article 261 bis is included in Title 12 of the Penal Code, entitled "Crimes or offences against public order", the protection of public order is the primary objective of the first three definitions of the offence. Under the first two paragraphs of article 261 bis, anyone who publicly incites to discrimination against a person or group of persons on the grounds of race, ethnic origin or religion or who promotes a racist ideology is subject to punishment. Insofar as the requirements of incitement and complicity in article 4 (a) of the Convention exceed the provisions of articles 24 and 25 of the Penal Code, they are, in any case, covered by the new article 261 bis (3) of the Penal Code. Organizing or supporting propagandist activities and participation in such activities are now punishable as such if their purpose is the dissemination of racist ideologies.

67. According to article 4 of the Convention, acts of racist violence and incitement to commit them must also be punished. They are covered by the provisions dealing with acts of violence in the special part of the Penal Code and by the provisions of the general section of the Penal Code concerning participation and criminality. Under article 4 (b) of the Convention, States parties commit themselves to declaring illegal and prohibiting organizations, and also organized and all other propaganda activities, which promote or incite racial discrimination and to recognizing participation in such organizations or activities as an offence punishable by law.

68. In Swiss law, and according to the jurisprudence of the Federal Tribunal, anyone concerned may petition the judge to dissolve an organization with legal personality which is engaging in illegal activities. The authorities, in turn, are obliged to request such dissolution. Thus, Swiss

law meets the first requirement of article 4 (b) of the Convention. However, Switzerland entered a reservation to article 4 of the Convention in order to avoid making mere membership in an organization punishable by law. Nevertheless, article 260 ter of the Penal Code, which has been in force since 1 August 1994, makes it illegal to join or support an organization whose nature and membership are secret and whose purpose is the commission of criminal acts of violence of a discriminatory nature.

69. Article 4 (c) of the Convention obliges States not to permit public authorities or public institutions to promote or incite racial discrimination. In Switzerland, the principle of equality is enshrined in article 4 of the Federal Constitution. Although this provision does not specifically mention the types of discrimination prohibited by the Convention (colour, "race", national or ethnic origin or descent), the requirement of equal treatment includes them all. It has already been mentioned that, although article 4 of the Federal Constitution states only that Swiss citizens are equal, the general principle of equality is universally applicable to both Swiss citizens and foreigners. The prohibition of arbitrary treatment implied by the concept of equality is binding on any public official, at the federal, cantonal or communal level. Thus, the Swiss legal system fully meets the requirements of article 4 (c) of the Convention.

70. Although article 261 bis of the Penal Code gives a somewhat abridged list of the types of discrimination forbidden under article 1 of the Convention, the words "race" and "ethnic origin" used therein have the same scope. However, article 261 bis goes beyond the requirements of the Convention by adding religious discrimination to the list of punishable acts. By so doing, Switzerland not only follows a Council of Europe recommendation made in 1966; it also fills a need in the field of criminal law by providing legislation in an area which, as history has recently shown, is not exempt from the worst kinds of discrimination, that of membership in a religious community.

71. Freedom of expression is of vital importance in a democratic State. However, if discriminatory speech constitutes an attack on human dignity, the public interest in the exercise of freedom of expression must give way before the greater interest of the victim of discrimination, who has a right to the protection of his personality. For this reason, article 261 bis (4) makes such acts of discrimination against individuals or groups punishable by law, even though the Convention does not expressly prohibit them. The same is true of the prohibition of what is generally referred to as "the Auschwitz lie". During the legislative process, it was in fact noted that denial of or an attempt to justify the crimes committed by the Nazi regime, particularly the genocide of the Jewish population of central Europe, have become the preferred tactics of contemporary racist movements. In Europe, not only Switzerland but France (since 1990), Germany (since 1994) and Belgium (since 1995) have enacted legislation making the denial or minimization of genocide a criminal offence.

72. Furthermore, under article 5 (f) of the Convention, States parties are required to ensure the right of access "to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafés, theatres and parks". Although this provision does not oblige States to make

it illegal to refuse access to such places or services, Swiss law includes this classic form of apartheid - which threatens participation in the everyday life of society and acquisition of the basic necessities - among the actions prohibited under article 261 bis (5) of the Penal Code. Article 261 bis entered into force on 1 January 1995. To date, just over 10 decisions have been handed down, and a number of legal proceedings are currently under way in various cantons. 28/

IV. ELIMINATION OF RACIAL DISCRIMINATION, WITH PARTICULAR REFERENCE TO SPECIFIC HUMAN RIGHTS (ART. 5 OF THE CONVENTION)

73. In accordance with the basic obligations set forth in article 2 of the Convention, article 5 stipulates that States parties must prohibit and eliminate racial discrimination in all its forms and guarantee the right of everyone to equality before the law. Under article 2 (1) (c), each State must also take effective measures to review its official policies and to amend any legal provisions which have the effect of creating racial discrimination (equality before the law).

74. Article 5 (a) to (f) of the Convention lists areas in which the guarantee of equality before the law seems particularly important from the point of view of respect for human rights. However, the Convention does not create new fundamental rights but simply strengthens, where necessary, the guarantee that the rights already provided for in the Swiss legal system can be exercised without "racial" discrimination.

A. Right to equal treatment before the tribunals and all other organs administering justice (art. 5 (a))

75. Under article 64 bis (2) of the Federal Constitution, the cantons have jurisdiction in matters of judicial organization and civil, criminal and administrative procedure. Thus, each of the 26 cantons has its own legislation on this matter. Federal legislation regulates only the procedures of federal judicial bodies; however, federal constitutional jurisprudence with regard to fundamental freedoms establishes a number of principles which are binding on the cantons. For example, the Federal Tribunal is responsible for ensuring that the cantonal regulations and authorities respect the principles set forth in articles 4 (the right to equality and all the procedural rights deriving therefrom) and 58 (the right to one's lawful judge) of the Federal Constitution, articles 5 and 6 of the European Convention on Human Rights 29/ and articles 9 and 14 of the International Covenant on Civil and Political Rights. 30/

76. Article 4 (1) of the Federal Constitution states: "All Swiss citizens are equal before the law. In Switzerland there shall be no subjects or privileges of place, birth, person or family". One characteristic of article 4 of the Constitution is the number and importance of the constitutional rights and principles which the Federal Tribunal's case law has derived from it, particularly in the area of procedure. These rules of jurisprudence are extremely diverse (equality of treatment, protection of good faith, prohibition of denial of justice, unjustified delay in handing down a

decision and excessive adherence to form, the right to be heard, the right to legal assistance without cost, and the principles of legality and proportionality).

77. Contrary to the wording of article 4 of the Constitution, not only Swiss citizens, but also foreigners, are equal before the law. 31/ Equality is a universally-applicable human right. However, the status of foreigner may constitute objective grounds for a difference in treatment where Swiss nationality plays a major role in the matter to be regulated, as in the case of civic rights and duties. Similarly, article 69 ter of the Constitution confers on the Confederation the right to legislate on the immigration, emigration, residence and establishment of foreigners.

78. With regard to the legality of the courts, article 58 of the Constitution states: "1. No one may be deprived of his lawful judge; therefore, no extraordinary courts of law may be set up. 2. Ecclesiastical jurisdiction is abolished". The basic purpose of this rule is to guarantee that no one shall be tried by ad hoc or ad personam courts but that, on the contrary, judicial procedure shall be governed by general, abstract rules; in other words, the judicial system shall be established by law. Article 58 thus presupposes the existence of a system of jurisdiction regulated by law. It is addressed primarily to the cantonal lawmaker responsible for establishing a lawful legal system. In fact, as stated above, the cantons have civil and criminal jurisdiction in matters of judicial organization, the administration of justice and procedure. Article 58 protects natural and juridical persons, Swiss citizens and foreigners, plaintiffs and defendants. However, it may not be invoked by persons who are only indirectly involved in a trial (lawyers, witnesses, experts, etc.). 32/

79. The prohibition of special courts of law also applies to instances where a case is dealt with on an emergency, arbitrary basis by a court which does not have jurisdiction in the matter 33/ or to those involving the arbitrary composition of an ordinary court. 34/ This does not mean that the cantons or the Confederation have no legal right to set up special courts with limited jurisdiction in certain specialized domains (such as lease tribunals, commercial courts or appeal boards for cases involving matters such as asylum or taxes). It must be remembered that military courts are special courts of this type, which are generally and abstractly regulated, rather than emergency courts. 35/

80. Article 58 of the Constitution includes a guarantee of the right to an impartial and independent court, from the point of view of both the authorities and the parties in a trial. Although this right is embodied in the cantonal judicial organization acts, the Federal Tribunal is free to consider whether such acts satisfy the constitutional guarantee.

81. In short, the Swiss legal system does not include any provisions which regulate access to the courts or the proceedings thereof in a discriminatory manner at either the federal or the cantonal level. Anyone, without racial discrimination of any kind, may invoke the procedural guarantees provided by the Swiss legal system and the international treaties to which Switzerland is a party.

B. Right to security and protection by the State (art. 5 (b))

1. Liberty and security of person

82. Liberty and security of person are guaranteed, in the Swiss legal system, by the unwritten constitutional right to personal freedom, which is expressly protected by the wording of the Federal Constitution only in certain respects by prohibitions on imprisonment for debt (art. 59 (3)) and corporal punishment (art. 65 (2)). According to case law, personal freedom is part of the unwritten constitutional law of the Confederation because it is a prerequisite for all other freedoms and is therefore an essential element of Swiss public order. 36/ Since the possibility of assessing a given situation and deciding thereon is also a condition for the exercise of many constitutional rights, the mental integrity of the individual is also protected by personal freedom. 37/ This is an imprescriptible and inalienable fundamental human right, of all Swiss and foreign individuals.

83. Insofar as it concerns the guarantee of liberty and security of person and the prohibition of arbitrary arrest (freedom of movement), the guarantee of personal liberty is supplemented by article 5 of the European Convention on Human Rights and article 9 of the International Covenant on Civil and Political Rights. Swiss criminal law makes certain de facto situations punishable by law, quite regardless of the ethnic or racial origin of the guilty party. These provisions are also applied without distinction on the grounds of the ethnic or racial origin of the guilty party.

2. Right to protection by the State

84. The cantons have the primary responsibility for ensuring the maintenance of public order and security. Police protection extends to, among other things, the right to life and physical integrity as well as property and public morals. In view of the principle of equality before the law (art. 4 of the Constitution; see above discussion of art. 5 (a), paras. 75-81), the authorities grant identical protection to everyone, regardless of "race".

C. Political rights (art. 5 (c))

Right to take part in the conduct of public affairs, to vote and to stand for election on the basis of universal and equal suffrage

1. Right to vote

(a) At the federal level

85. At the federal level, the right to vote is guaranteed by articles 43 (1) and (2) and 74 (1), (2) and (3) of the Constitution, which read:

"Article 43.

1. Every citizen of a canton is a Swiss citizen.

2. In this capacity, he may take part in all federal elections and votes at his domicile after having duly proved his right to vote."

"Article 74.

1. Swiss men and women shall have the same rights and the same duties in matters of federal elections and other federal votes.

2. Each Swiss man or woman who has completed his or her 18th year and who has not been deprived of his or her political rights by the legislation of the Confederation or of the canton where he or she is resident has the right to participate in such elections and other votes.

3. The Confederation may decree uniform legal provisions on the right to participate in elections and other votes on federal matters."

These provisions are given concrete expression by the Federal Act of 17 December 1976 on political rights, 38/ the Federal Act of 19 December 1975 on the political rights of Swiss citizens living abroad 39/ and the regulations for the application thereof.

86. The Swiss political system may be termed a "semi-direct democracy", which means that the legislative texts adopted as a result of parliamentary debates are not final because the Constitution has recognized the right of popular referendum since 1874. Thus, if, within 90 days of the adoption of a law by the Federal Chambers, 50,000 valid signatures are collected from voters who would like the new provisions to be approved by the people, these provisions have to be voted on by the people and cannot enter into force unless a majority of the citizens who have taken part in the voting so decide. The same happens at the request of eight cantons (art. 89 (2) and (4) of the Federal Constitution). Consequently, a law enters into force only after the 90-day referendum period at the earliest. In addition to acts, urgent decrees grounded in the Constitution and general federal laws and decisions, the referendum applies to international treaties which are not subject to denunciation and are concluded for an unspecified period of time, as well as those which provide for membership in an international organization or lead to the multilateral unification of the law (art. 89 (3) of the Constitution). Constitutional amendments, emergency decrees derogating from the Consitution and membership in collective security organizations or supranational communities are subject in all cases to the dual consent of the people and the cantons (compulsory referendum, art. 89 (5) and art. 123 of the Federal Constitution).

87. Since 1891, the Constitution has also recognized the right of popular initiative to propose the full or partial amendment of the Constitution (arts. 120 (1) and 121 of the Constitution). For this purpose 100,000 citizens' signatures must be collected within a period of 18 months. Parliament cannot object to the submission of a popular initiative to the vote except to declare it inadmissible as a result of a procedural defect or - pursuant to prevailing doctrine and the recent practice of the Federal authorities - null and void as a result of a violation of a peremptory norm of international law ("jus cogens"). 40/ Since an initiative can relate only to constitutional amendments, it must have the dual consent of the people and the cantons in order to be adopted.

88. Article 74 (1) establishes the general principle of universal suffrage, which is applicable to the election of members of the National Council (People's Chamber), 41/ to other federal votes, and to the rights of initiative and referendum. The election of representatives of each canton to the Council of States (Chamber of Cantons) is not governed by federal law but by the cantonal constitutions, and proceeds in all the cantons on the basis of universal suffrage. The Federal Council, in turn, is elected by the two Chambers combined as the Parliamentary Assembly. 42/

89. The equality of political rights is a prerogative whose violation may be appealed against (arts. 77-80 of the Federal Act concerning Political Rights). Neither the Constitution nor federal legislation prescribes specific duties in this regard. The cantons are free to do so, however, and to make it compulsory to assist in the counting of votes, even at federal elections. 43/

90. Article 74 (2) deals with the conditions to be fulfilled in order to exercise the right to vote. These are three in number:

(a) Swiss nationality. This condition has the effect of excluding foreigners resident in Switzerland from the right to vote. Since it applies only to political rights at the federal level, it does not prevent the cantons from involving foreigners in political decisions at the level of the canton or commune; 44/

(b) Age of civic majority. This is established as 18 years. The cantons prescribe the same age-limit;

(c) Civic capacity. This is governed by article 2 of the Federal Act concerning Political Rights, under which citizens deprived of legal capacity under article 369 of the Civil Code for reasons of mental illness or feeble-mindedness are deprived of the right to vote at the federal level. Thus, deprivation of civic rights presupposes the declaration of legal incapacity or, in other words, imposition of a guardianship order founded on one of the two causes exhaustively described in article 369 of the Civil Code. 45/

(b) At the cantonal level

91. At the cantonal level, citizens' political rights are more extensive than at the federal level since the Government is directly elected by the people and many cantons also provide, in addition to constitutional initiative, which is possible in federal law only, for a right of legislative initiative allowing a specified number of citizens to submit a bill to the vote of the people. It should also be pointed out that each canton has its own constitution and laws. Legislative power in the cantons is generally exercised by a unicameral parliament elected on the basis of proportional representation. Some cantons, however, still operate a system of direct democracy whereby legislative power is exercised by assembly of the people. Executive and administrative power, on the other hand, is held by a "Council of State", elected by the people for a specified period and organized according to the same principles as the Federal Council: the President changes each year and collegiality is the rule.

92. Under article 74 (4) of the Constitution, cantonal law is decisive with respect to cantonal and commune votes and elections. The cantons do not, however, have unlimited freedom in this regard but have to safeguard "the exercise of political rights in accordance with republican standards" (art. 6 (2) of the Federal Constitution). The cantons are also required to ensure equality of treatment (art. 4 of the Federal Constitution) and to uphold the rights of the people (art. 5 of the Federal Constitution). They cannot, therefore, derogate from the principle of universal suffrage through unjustifiable discrimination against priests, defaulting taxpayers 46/ or women, 47/ or through racially-motivated discrimination.

93. In general, the cantons establish Swiss nationality as a condition for the right to vote, while admitting a number of exceptions (see below, section 3, with regard to the political rights of foreigners). The legal voting age is 18 years. The great majority of the cantonal constitutions, like federal law, provide for deprivation of civic rights only in the case of persons deprived of legal capacity on the grounds of mental illness or feeble-mindedness. Other grounds for civic incapacity are set forth, however, in individual constitutions (imposition of a guardianship order, culpable insolvency, persistent and culpable dependence on social welfare, imprisonment, etc.). The literature seems to recognize such exclusions, although now outdated, as not being in conflict with the Federal Constitution. 48/ There are only two cantons, however, that are still concerned, namely Schwyz and Saint Gallen.

2. Right to stand for election

(a) At the federal level

94. At the federal level, under articles 75, 96 and 108 of the Federal Constitution, there are three rules governing eligibility to the National Council (People's Chamber), the Federal Council and the Federal Tribunal, corresponding to those already described with respect to the right to vote and the rights of initiative and referendum (Swiss nationality, civic majority and non-deprivation of legal capacity). In addition to these, however, there is a further, special rule - that of incompatibility with an ecclesiastical function, eligibility being confined to the laity under the Constitution. 49/ This rule, which has its roots in the religious wars of the country's history and has been criticized in the literature, no longer serves any theoretical or practical purpose. The process of Constitutional reform will include the removal of the provision on laity. 50/

(b) At the cantonal level

95. At the cantonal level, the constitutions' authors have to respect the same principles as apply to the right to vote when enacting eligibility rules applicable to members of their executive, legislative and judicial bodies (arts. 4, 6, 43 and 60 of the Federal Constitution). In the election of cantonal representatives to the Council of States (Chamber of Cantons), for instance, the cantons are free to limit such eligibility to their inhabitants, but not to their registered citizens, since the right of residents of the Confederation to stand for office is guaranteed by the Federal Constitution.

96. In addition to the above-mentioned eligibility rules, the Federal Constitution and cantonal judicial systems lay down provisions establishing a number of incompatibilities between the exercise of a public function and other activities. These are usually aimed at safeguarding the separation of executive, legislative and judicial powers, as well as the bicameral system. In no case are they motivated by racial considerations.

3. The political rights of foreigners in Switzerland

97. This paragraph gives a brief overview of the situation as an introduction to the question of the political rights of foreigners at the local level. However, it will be recalled that article 5 of the Convention does not oblige States to treat their own nationals and foreign nationals in the same way, particularly with regard to political rights. This provision prohibits distinctions based solely on racial or ethnic grounds and forbids discriminatory distinctions between foreigners.

98. At the present time, only the cantons of Neuchâtel (at the communal level) and Jura (at both communal and cantonal levels) accord foreigners the right to vote. It should be pointed out that, in the former of these two cantons, an initiative to accord settled foreigners the right to be elected to communal entities was rejected in 1992. The new Constitution of the Canton of Appenzell - Outer Rhoden, adopted in 1995, authorizes communes to grant foreigners the right to vote. Initiatives to introduce political rights for settled foreigners have been documented in the nine cantons which, together, account for over half of the Swiss population. In every case where such an initiative has already led to a ballot, it has been rejected.

99. At the federal level (Federal Commission for Foreigners, Federal Commission on Racism), the cantonal level (Geneva and Jura, Neuchâtel and Thurgau) and the communal level (in 20 or so communes), foreigners may be appointed by the authorities to sit with representatives of the latter as members of official committees, which allows them to express their views on subjects of relevance to the social integration of foreigners. In the canton of Thurgau, this right is guaranteed by the Constitution. 51/

100. Foreigners are entitled to vote on Swiss territory in their own national elections, subject to prior notification. Initially, this was possible only by correspondence, but since 1994 this right can be exercised through the diplomatic and consular missions of the countries of origin.

4. Right to equal access to public service

101. Generally speaking, only nationals have the right of access to public service at the communal, cantonal or federal level, as authorized, moreover, by article 1 (2) and (3) of the Convention. Furthermore, according to case law, the limitation of the access of foreigners to some professions is compatible with article 4 of the Federal Constitution under certain conditions. 52/

102. With regard to access to public service in the broad sense, the Federal Act of 30 June 1927 containing the Regulations on Federal Public Officials 53/ (henceforth "Regulations") provides that "Any Swiss national of good morals may

be appointed to federal public office. A person deprived of legal capacity or pronounced incapable of serving in public office may not be appointed as long as the measure taken in regard to the person continues to have effect. With the consent of the Federal Council, a person not of Swiss nationality may in exceptional cases be permitted to enter public office" (art. 2 of the Regulations).

103. Broadly speaking, public officials are appointed on a competitive basis (art. 3 of the Regulations). Their appointment may be subject to the fulfilment of various requirements, such as age, ability, suitable educational qualifications, or even the possession of a rank in the Swiss army; it may also depend on the result of an examination or training course (art. 4 of the Regulations). Article 4 (2) of the Federal Constitution implies equality for men and women with respect to access to public service. There are no provisions, at the federal, cantonal or communal levels, of such a nature as to constitute racial discrimination.

D. Other civil rights (art. 5 (d))

1. Article 5 (d) (i): Right to freedom of movement and residence within the border of the State

104. In accordance with article 45, paragraph 1, of the Federal Constitution, any Swiss citizen is entitled to reside in any part of the country. According to the case law of the Federal Tribunal, this also means that cantons and communes do not have the right to prevent or impede transfer of domicile to another canton, another commune or another country. 54/

105. In Swiss law, however, the residence of foreign nationals is subject to authorization and the permit is valid only for the canton which issued it (Federal Act on the Residence and Establishment of Foreigners (LSEE) art. 8). Although, as a general rule, this legislation limits a foreigner's freedom of choice of residence in Switzerland, especially for foreigners who do not have an establishment permit (28 per cent of foreign residents), there is no restriction on the free movement of individuals within a canton.

106. The distinction thus made between Swiss nationals and foreigners is not discriminatory within the meaning of the Convention. It is covered by article 1, paragraph 2, under which the "Convention shall not apply" to distinctions made by a State party to the Convention between citizens and non-citizens. According to doctrine, contracting States have the right to treat their own nationals and non-nationals differently, provided that this distinction is not discriminatory in purpose or does not entail such consequences. 55/ As regards the regulations concerning conditions of residence, Swiss law makes no distinction on grounds of ethnic, racial or religious membership between non-nationals legally present on Swiss territory. Furthermore, preferential treatment, based on bilateral or multilateral international treaties (e.g. a convention on establishment), vis-à-vis nationals of certain States is permitted because it does not, per se, run counter to the purpose of the Convention.

107. It should also be noted that a foreigner holding a residence or establishment permit may stay for up to three months in a different canton

without engaging in gainful activity there. In the case of a stay for a longer period and before taking up employment, he must obtain the approval of this canton. A foreigner who moves to another canton (i.e. transfers his principal interests to that canton) is required to obtain a new permit. He must report his arrival within eight days to the immigration department at his new domicile. If he is not in possession of an establishment permit, he may not take up employment unless he has obtained prior authorization from the immigration department (LSEE, art. 3, para. 3, and art. 8, para. 3). A foreigner in possession of an establishment permit will, in principle, be authorized to move to another canton. If he is a national of a State with which Switzerland has concluded an establishment treaty, he will have the right to freedom of movement between cantons and may only be denied a request to change his canton of residence if legal grounds exist for his expulsion.

2. Article 5 (d) (ii): Right to leave any country, including one's own, and to return to one's country

108. In accordance with article 45, paragraph 2, of the Federal Constitution, "No Swiss citizen may be expelled from Switzerland". Although deportation is prohibited under the Constitution, extradition for criminal reasons is compatible with article 45. In fact, Switzerland can extradite its nationals only to those States which grant reciprocity and provided that the punishable act constitutes a crime or offence under Swiss law. Furthermore, a Swiss citizen can be extradited only with his agreement (Federal Act on International Mutual Assistance in Criminal Matters, art. 7). 56/

109. In accordance with article 10, paragraph 2, of the Federal Decree of 21 December 1995 on cooperation with international tribunals established to prosecute serious violations of international humanitarian law, 57/ a Swiss citizen may be handed over to such tribunals, provided that the latter undertake to transfer the person concerned to Switzerland on the conclusion of the proceedings in order that he may, where appropriate, serve his sentence there.

110. It should be pointed out that the Federal Act of 12 June 1959 concerning the Military Service Exemption Tax 58/ provides, in article 35, that the issuing or extension of a passport may be subject to the condition that taxes due be paid or that security in the amount of the taxes due be furnished.

111. Lastly, we would recall that a foreigner may not be deported to a country where he is in danger of being subjected to torture or inhuman or degrading treatment (non-return principle). 59/ In addition, in some cases the Federal Tribunal has considered that deportation may violate the right to respect for family life, as guaranteed in article 8 of the European Convention on Human Rights and article 17 of the International Covenant on Civil and Political Rights.

3. Article 5 (d) (iii): Right to nationality

112. The Federal Act on the Acquisition and Loss of Swiss nationality, of 29 September 1952, 60/ (henceforth referred to as the Nationality Act) provides for two ways of acquiring nationality: acquisition by operation of the law, particularly by filiation, and naturalization. The naturalization

of foreign nationals or stateless persons depends on certain conditions of integration in the national community and length of residence in Switzerland (12 years, or 5 years in certain cases; art. 15). There is, however, no right to naturalization, even for stateless persons, which, in the case of children who can obtain no nationality other than Swiss nationality, is perhaps not fully compatible with the requirements of article 24, paragraph 3, of the International Covenant on Civil and Political Rights, 61/ but does not pose any problems with regard to compatibility with the Convention under consideration in that the distinction is made between nationals and non-nationals (art. 1, para. 2). However, a child of unknown filiation found in Switzerland acquires the citizenship of the canton on whose territory he or she was found, and thereby Swiss nationality (Nationality Act, art. 6).

113. An amendment of the Federal Constitution with regard to acquisition and loss of Swiss nationality was rejected by the people and the cantons on 12 June 1994. It had been designed, in particular, to enable foreigners who had spent their childhood in the country to avail themselves of facilitated naturalization, thereby reducing the time ordinarily required for that procedure.

4. Article 5 (d) (iv): Right to marriage and choice of spouse

114. The right to marriage is guaranteed by article 54 of the Federal Constitution, and also by article 12 of the European Convention on Human Rights and article 23, paragraph 2, of the International Covenant on Civil and Political Rights. Generally speaking, in Swiss law the institution of marriage comprises five fundamental characteristics: monogamy, heterosexuality, exogamy, initial mutual consent and solemnization in accordance with the procedures of civil law. Thus the Civil Code makes the validity of marriage subject to the following conditions:

(a) No man or woman may marry before the age of 18 (new art. 96 of the Civil Code, in force since 1 January 1996). 62/ Under new article 14 of the Civil Code, civil majority is now set at 18. Until 31 December 1995, a woman could marry at the age of 18 and a man at the age of 20. Exceptionally, however, the government of the canton of domicile could authorize a women of 17 or a man of 18 to marry, with the agreement of the parents or guardians (former art. 96 of the Code). Since civil majority had been set at 20, marriage under that age created majority (emancipation through marriage, former art. 14, para. 2, of the Code). Such a marriage required the agreement of the parents or guardians (former art. 98 of the Code). Since 1 January 1996, therefore, the marriageable age for both men and women has been standardized and the possibility of emancipation for women aged 17 abolished;

(b) Due discernment and absence of mental illness (Civil Code, art. 97). The requirement of due discernment derives from the rules on the exercise of civil rights. The Federal Tribunal has made a point of specifying that it must not be interpreted too strictly, in order to avoid unjustifiably jeopardizing freedom of marriage. In a decision of 1983, it even stated that marriage must be solemnized if it does not appear to be prejudicial to the person concerned, irrespective of any doubts that may exist concerning the due discernment of one of the prospective spouses. 63/ As regards the condition

of absence of mental illness, recent doctrine favours its restrictive interpretation: only illnesses depriving a person of due discernment may render him or her ineligible for marriage. 64/ This condition would therefore appear to merge with that of due discernment, to which it adds nothing. This view appears justified, in the light of the fundamental character of freedom to marry. However, it does not yet seem to have been established by the Federal Tribunal which, in admittedly very old rulings, has stated that "a person who is suffering from a mental illness is incapable of entering into marriage, even if he is capable of due discernment". 65/ The preliminary draft amendment of the Civil Code provides for the abandonment of this absolute impediment for a person suffering from mental illness;

(c) In the case of the person under interdict, the consent of his legal representative (Civil Code, art. 99). Since the person under interdict may not exercise civil rights, this consent is essential. In order to avert abuse, the law provides for a right of appeal to the guardianship authorities against a refusal by the legal representative, who is responsible for safeguarding the interests of that person, and notably his right to freedom to marry;

(d) The absence of impediment to marriage. The Civil Code prohibits marriage between direct relations by blood or marriage, 66/ whether the relationship exists through filiation or adoption (with, in the latter case, a possible derogation by decision of the government of the canton of domicile (Civil Code, art. 100)). In order to marry, it is also necessary to furnish evidence that any previous marriage has been dissolved (monogamy requirement, Code, art. 101);

(e) Observance of the procedural conditions established by articles 105 et seq. of the Civil Code. These conditions relate to the publication of the promise of marriage, time-limits, the form of celebration of the marriage, etc. Once the civil marriage has been solemnized, the registrar hands the spouses a marriage certificate, in the absence of which the religious blessing of the union may not take place (Code, art. 118). 67/ These procedural conditions will be simplified in the context of the forthcoming reform of the Civil Code.

115. The constitutional freedom of marriage implies the freedom not to marry. Article 91 of the Civil Code (which provides that the law shall not allow any action to compel a fiancé who refuses to marry to enter into marriage) and article 124 (which makes absence of consent a ground for relative nullity of the marriage) reflect the importance of the free consent of the spouses. Consequently, there is no impediment to couples choosing to live together without marrying.

116. However, the law does not provide any special status for couples and families who cohabit. This has consequences for the relationship of filiation, which exists as a matter of course between the mother and her child (in accordance with the maxim "mater semper certa"; Civil Code art. 252). On the other hand, filiation is established with respect to the father only through his marriage to the mother, recognition, a judicial decree or adoption (art. 252, paras. 2 and 3).

117. As regards foreigners, who are, of course, also covered by the guarantee contained in article 54 of the Federal Constitution and article 12 of the European Convention on Human Rights, article 44 of the Federal Act on Private International Law of 18 December 1987 68/ provides that in principle the substantive conditions to which the solemnization of marriage is subject in Switzerland are governed by Swiss law, but that if these conditions are not fulfilled, fulfilment of the conditions established by the national law of one of the betrothed is sufficient for the marriage to take place. A marriage legally solemnized abroad is recognized in Switzerland (art. 45 of the same Act).

5. Article 5 (d) (v): Right to own property

118. The right to own property is guaranteed by article 22 ter of the Federal Constitution. In addition to the ownership of movable and immovable property, the guarantee of ownership extends to restricted real rights, contractual rights, the rights to own intellectual property, possession and the acquired rights of citizens vis-à-vis the community. Persons enjoying the guarantee of ownership are natural and legal persons in private law holding the protected rights. Foreigners as well as Swiss may avail themselves of this guarantee. However, the Federal Act on the Purchase of Immovable Property by Foreigners 69/ restricts the right of foreigners to purchase such property (purchase subject to authorization, quota). This Act does not, however, violate the prohibition of racial discrimination since it draws a distinction between nationals and non-nationals, as authorized by article 1, paragraph 2, of the Convention, and does not discriminate against a particular nationality.

6. Article 5 (d) (vi): Right to inherit

119. Under the terms of article 539 of the Civil Code, all persons who are not legally incompetent to receive property may be heirs or acquire property through a will or successional settlement. The determining criterion in this case is enjoyment of civil rights which, in accordance with article 11 of the Civil Code, is applicable to all. The de cujus is in principle free to decide to whom he intends to make over his property in the event of his death. The only limit is constituted by the reserve (Code, arts. 470 et seq.), which gives certain categories of legal heirs a right, in principle irrefragable, to a share of the inheritance. The right of a compulsory heir to his reserved portion may not be withdrawn unless a ground for disinheritance exists. This would be the case if the compulsory heir had commited a serious offence against the deceased or one of his relatives or if he had been seriously remiss in performing the duties incumbent on him by law vis-à-vis the deceased or his family (Civil Code, art. 477). The right of all persons to inherit is thus recognized in Switzerland, without discrimination on grounds of race, colour, or ethnic or national origin.

7. Article 5 (d) (vii): Right to freedom of thought, conscience and religion

120. In Switzerland, freedom of conscience and belief is inviolable. No one may be obliged to belong to a religious association, to receive religious education or to participate in a religious ceremony or incur penalties of any kind because of his or her religious opinion (Federal Constitution, art. 49).

This guarantee, which obliges the State to adopt a position of religious neutrality, 70/ protects all religious views or beliefs, even those held by small minorities, as is the case in Switzerland with Mormons, Jehovah's Witnesses or Methodists. 71/ Freedom of thought, conscience and religion is also guaranteed by article 9 of the European Convention on Human Rights and article 18 of the International Covenant on Civil and Political Rights.

121. The cantons are free to determine their relationships with the churches. In particular, while respecting freedom of conscience and belief, they may designate one or more churches as "official churches" and, for example, provide for the remuneration of their ministers, subsidize them or allow them to raise taxes. The practice adopted by the cantons has been deemed to be in accordance with the general principle of equality.

122. The Constitution also protects the right to change one's religion, and hence to leave a church to which one belongs. Although the Federal Tribunal allows the churches to establish a special procedure to enable a member to leave, that procedure must not constitute an obstacle to the wishes of the person concerned. 72/ Freedom of conscience also means that an individual may not be required to take an oath, whether before the courts or in connection with the individual's appointment to a public office. The relevant enactments and standard practice allow the oath to be replaced by a solemn undertaking.

123. Religious opinion alone is not enough to exempt a person from fulfilling a civic duty, such as military service; refusal to perform such service carries a penalty of imprisonment, as set out in the Military Penal Code of 13 June 1927. 73/ The first easing of this regime nevertheless occurred with the amendment, on 15 July 1991, of article 81 of that Code, which created the possibility of performing community service work in lieu of imprisonment. 74/ On 19 May 1992, the people and cantons accepted the proposal put before them for the third time to introduce alternative civilian service. Article 18 of the Constitution now establishes, together with the obligation to perform military service, the principle of civilian service, which must be translated into practical terms by the legislature. The Federal Act on Civilian Service, which entered into force on 1 October 1996, provides for no alternative to the obligation to serve: the individual does not have the right to choose freely between military service and civilian service. But anyone who is able to convince a civilian commission that he cannot reconcile the obligation of armed service with his conscience (notably for religious reasons) may perform alternative civilian service.

124. According to case law, bodies corporate may not avail themselves of freedom of conscience and belief to evade payment of a tax, on the grounds that they have neither conscience nor belief, 75/ unless the bodies in question are pursuing, in accordance with their statutes, a religious or ecclesiastical purpose. 76/ Article 49, paragraph 6, of the Federal Constitution stipulates that no one is required to pay taxes whose proceeds are specifically used to pay for worship by a community to which he or she does not belong. Despite this provision, however, it is not possible in all cantons to obtain the deduction of the share of a general tax that may be allocated to worship in one of the main churches in a canton, to which the taxpayer in question does not belong.

125. The right to manifest one's religion through worship is guaranteed by article 50 of the Constitution, and the right to hold a moral or other conviction is guaranteed by freedom of expression. These manifestations may be restricted only if there is a preponderant public interest and bearing in mind the general principle of proportionality. Thus, in ruling on a case in which prison authorities refused to organize a collective religious service for prisoners of the Islamic faith, while it did so for members of the official churches of the canton, the Federal Tribunal ruled that "the recognition of a religious community as an official church cannot be a criterion for the admissibility of collective divine service. Insofar as the decision to refuse Islamic prisoners the possibility of holding their prayers on a Friday is based on the fact that the Islamic community does not enjoy public-law status, it is contrary to article 50 of the Constitution".

126. In accordance with article 27 of the Constitution, the cantons are responsible for providing primary education in State schools. Such education must be free, compulsory and non-religious. State schools must also admit persons of all beliefs, without restricting their freedom of conscience and belief. The Federal Tribunal takes this non-religious requirement very seriously and has ruled that displaying a crucifix on the walls of public classrooms is contrary to article 27 of the Constitution. 77/ Similarly, in a recent ruling, it accepted the recourse initiated by the father of a Muslim girl, who had been refused exemption from joint swimming classes for boys and girls, on the ground that no preponderant public interest prevailed over the private interest with regard to such an exemption. 78/ The public authorities follow the same line in ensuring that, as far as possible, parents and children may celebrate their religion together. However, since compulsory schooling is a civic obligation, a pupil may not cite freedom of conscience in order to be excused school, 79/ given that the persons concerned can always choose education in a private school that matches their beliefs. Such schools are freely organized, in accordance with the constitutional freedom of trade and industry, and, as applicable, on the basis of freedom of conscience and belief. This does not exclude a procedure for cantonal authorization to ensure that the level of private education corresponds to the standard in State schools. 80/ Finally, the non-religious nature of State schools does not exclude religious education based on the precepts of the dominant faith in the canton, but this must be optional. 81/

8. Article 5 (d) (viii): Right to freedom of opinion and expression

127. In 1965, the Federal Council ruled that freedom of expression was "an unwritten constitutional right of the Confederation". 82/ Case law incorporates in this right the freedom to form an opinion, to hold an opinion and to communicate it to others. We would point out that article 10 of the European Convention on Human Rights and article 19 of the International Covenant on Civil and Political Rights also protect freedom of opinion and expression and that any person who considers that his interests have been jeopardized may avail himself of them.

128. In the context of direct democracy, the right to form an opinion freely is of particular importance. It goes without saying that the public authority is not entitled to impose an opinion on an individual by any means. This is

why the Federal Tribunal considers that the establishment of a State radio or television network is contrary to freedom of opinion. 83/ Like freedom of opinion, freedom of expression occupies a dominant place in the Swiss constitutional order, as indicated by the following quotation from a decision of the Federal Tribunal:

> "But freedom of expression is not only, like other express or implicit freedoms in federal constitutional law, a condition of the exercise of individual freedom and an indispensable element for the development of the human person; it is also the basis of any democratic State. Permitting the free formation of opinion, particularly political opinion, it is essential to the proper exercise of democracy. It thus deserves a special place in the catalogue of individual rights guaranteed by the Constitution and special treatment by the authorities." 84/

129. Freedom of expression protects all forms of communication between individuals, whether by oral, written or symbolic means (streamers, badges, etc.). It incorporates freedom of information, and also artistic and scientific freedom. According to case law, it applies only to the world of ideas. Any declaration that has a primarily commercial purpose is covered by the freedom of trade and industry (Constitution, art. 31). Like freedom of opinion, it applies to everyone. However, it does not have the same absolute character and its use may be subject to special restrictions.

130. Freedom of expression includes freedom to receive and communicate information. It should be noted in this regard that article 55 of the Constitution expressly guarantees freedom of the press, and that article 55 bis protects the independence of radio and television, which must, however, faithfully present events and fairly reflect different opinions. To ensure the best possible compliance with these objectives, radio and television are subject to a concessionary regime, with concessions granted by the federal authority. This regime, which derogates from the principles of free competition, can be explained primarily by the desire, in a small multilingual country, to have national programmes broadcast in the four official languages and to avoid excessive concentration of the media in the hands of powerful groups. It does not imply any State intervention in the autonomy of the radio and television broadcasting enterprises. Any person who thinks that the radio or television networks have violated their obligation of objectivity may file a complaint with an independent recourse authority, and then with the Federal Tribunal, by means of the administrative law remedy (Federal Act on Radio and Television, arts. 57 et seq., of 21 June 1991). 85/

131. Another right included in freedom of expression is that of "obtaining information from sources accessible to all". 86/ The concept of "sources accessible to all" does not, unless there is an express legal rule to the contrary, include the records of the administration. The case law in this area is in fact rather restrictive 87/ and accepts a right to information only in four situations: if the information has been declared freely accessible, if it has been provided freely by the authority, 88/ if the exercise of a political right is at stake, or if an individual is personally concerned by the document he or she seeks to consult.

132. In accordance with the constitutional principles, and also article 10 of the European Convention and article 19 of the Covenant, the only grounds for limiting freedom of expression are a legal basis and preponderant public interest. In general, the aim is to achieve a balance, sometimes a delicate one, between public interest in the maintenance of order and the private interests of the person involved, but also the public interest in freedom of expression.

133. The Penal Code sets the following limits on freedom of expression:

Prohibition of calumny (art. 303);

Prohibition of the violation of commercial secrets, of secrets in the private domain or relating to an office or of professional or military secrets (arts. 162, 179 and 179 quater, 320, 321 and 329);

Prohibition of misuse of the telephone (art. 179 septies);

Prohibition of public incitement to crime and violence (art. 259);

Prohibition of interference with the peace of the dead (art. 262) or dishonouring Swiss emblems (art. 270);

Prohibition of the representation of violence (art. 135);

Prohibition of violations of freedom of religion and worship (art. 261);

Prohibition of racial, ethnic or religious discrimination (art. 261 bis);

Prohibition of incitement to dereliction of military duty (art. 276);

Prohibition of subversive foreign propaganda (art. 275 bis);

Prohibition of insults to a foreign State or an inter-State institution (arts. 296 and 297); 89/

Mention should also be made of provisions designed to protect honour (art. 173 et seq.) or to punish certain offences against sexual integrity (such as "hard core" pornography).

134. Article 28 et seq. of the Civil Code protect personal rights against unlawful attack, particularly in the press (right to compensation, provisional measures to prevent the attack, right of reply). In this connection it should be noted that the person accused of an attack against honour incurs no punishment if he or she can demonstrate that the allegations were true or that he or she had serious reason to believe them to be true (art. 173, para. 2, of the Penal Code). This provision also protects freedom of expression and the press against improper prosecution.

135. The freedom of expression of foreigners is subject to specific restriction. Pursuant to the decree of the Federal Council dated 24 February 1948 concerning political speeches by foreigners, foreigners

who do not have an establishment permit 90/ may speak on a political subject, at public or private meetings, only with special authorization. Such authorization will be refused if there are grounds to fear that the country's internal or external security may be endangered or that public order may be disturbed. Foreign speakers must abstain from any interference in internal political affairs.

136. Prisoners may also avail themselves of freedom of expression and of the right to receive information from sources that are generally accessible, provided that and insofar as prison security and order are not affected thereby. For further details on this question, see the initial report of Switzerland to the Human Rights Committee (CCPR/C/81/Add.8, 26 May 1995, para. 370).

137. According to the case law of the Federal Tribunal, use of the public domain to disseminate an opinion may "if, by its nature or intensity, it exceeds the usual bounds", 91/ be subject to prior authorization by the cantonal or federal authorities, even if there is no express legal basis therefor. The authorities must take account of the principles of equal treatment and proportionality, as well as the interests involved, giving particular weight to those that are protected by fundamental rights. 92/

138. None of the above-mentioned restrictions is such as to constitute racial discrimination.

9. Article 5 (d) (ix): Right to freedom of peaceful assembly and association

139. In the Swiss legal order, the right of peaceful assembly is an unwritten constitutional right, recognized by the Federal Tribunal in 1970, 93/ and is an important constituent of the democratic system. This right is also incorporated in articles 11 of the European Convention on Human Rights and 21 of the Covenant on Civil and Political Rights and is guaranteed regardless of the nature of the opinions expressed (subject to certain limitations of a penal nature mentioned below) and includes the right to call a meeting, to organize a meeting, to participate in a meeting or to abstain from participating in a meeting. This right applies not only to Swiss nationals, but also to foreigners, with a limitation on meetings of a political nature, in which they may speak only if they have been authorized to do so (on this point see sect. 8, paras. 127 to 138 above).

140. The main distinction that should be made between the types of meetings relates to the place where they are held: whether indoors or in the public domain. Since meetings of the latter type are far more likely to disturb public order and involve increased use of the public domain, they may be subject to greater limitations than the former, or they may be made subject to authorization. The right to hold meetings on private premises or private land is limited only by police requirements regarding disturbance of the peace at night or respect for the neighbourhood, as well as the property rights of third parties. Meetings that jeopardize the constitutional order (in the sense of article 275 of the Penal Code) or relations with foreign States (in the sense of articles 296 et seq. of the Penal Code) may also be

prohibited or sanctioned. However, case law makes it clear that the mere expression of views, even if they are revolutionary, must be tolerated. 94/

141. According to case law, meetings involving an increased use of the public domain (this is taken to be use that prevents or limits the normal circulation of the public, cf. ATF 100 Ia 392) may also be subject to prior authorization by the cantonal authorities, even if there is no express legal basis therefor. 95/ Since the State has the task and the power to ensure the normal use of the public domain, it is within its rights to regulate the use thereof by means of its general police power. 96/ However, the authorities may not refuse authorization for a meeting on the public highway. Their power of assessment is limited by the requirement to take objective account of the importance of freedom of assembly which, without conferring the right to use the public domain at a specific place and at a specific time, confers a certain right of requisition when its exercise so requires. 97/ Moreover, the Federal Tribunal has laid down that freedom of assembly on the public domain may be limited only if the exercise thereof objectively creates a direct and imminent danger to public order. 98/ In particular, mere opportuneness is not deemed sufficient grounds to prohibit a meeting, and in no event may the authorization procedure be used as a form of prior censorship. 99/ Racial considerations may not under any circumstances be grounds for restricting freedom of assembly.

142. The system of prior authorization must also be applied with flexibility, particularly in the case of spontaneous peaceful demonstrations, which must not be dispersed with force merely because they have not been authorized. 100/ The principle of proportionality also requires that an authorization should not be refused, but rather be subject to certain conditions designed to avoid any danger to public order. The authority must, however, not make the granting of an authorization subject to conditions if the problems that are likely to arise during a meeting can be avoided by other appropriate measures, above all police supervision. The extent of the supervisory measures must be in reasonable proportion to the interest of holding the meeting. The authority's task is far from simple, since the authority must often forecast how a meeting will develop when assessing whether a meeting is likely to jeopardize public order. Here again the principle of proportionality requires that any restriction must be based on serious reasons to believe that public order is threatened.

143. The principle that a measure must, in general, be applied to the party actually responsible for disturbing public order means that except in a case of necessity, a meeting should not be prohibited on the grounds that it is likely to be disturbed by outside elements. The problem is particularly acute with regard to counter-demonstrations. While it is possible, in order to prevent violence, to prohibit a demonstration and a counter-demonstration, account must nonetheless be taken, in the interests of equality of treatment, of the mutual interests of the demonstrators in order to ensure that one group may not announce a counter-demonstration merely to cause prohibition of the other group's demonstration. 101/

144. Pursuant to article 56 of the Federal Constitution, "Citizens have the right to form associations, provided that the purpose of these associations or

the means they use are not unlawful or dangerous to the State. Cantonal laws shall make the necessary provision for the prevention of abuses." Historically, freedom of association was conceived primarily to guarantee the free formation of political parties. This remains one of its major functions, along with the protection of the right to form trade unions. Today, freedom of association is also protected in Switzerland by article 22 of the International Covenant on Civil and Political Rights, article 8 of the International Covenant on Economic, Social and Cultural Rights 102/ and article 11 of the European Convention on Human Rights.

145. The association protected by article 56 of the Constitution must have a purpose in the realm of ideas (in the broadest sense). Those whose aim is to make a profit are covered by article 31 of the Constitution, guaranteeing freedom of trade and industry. They may thus be subject to the limitations relating thereto (arts. 31 et seq. of the Constitution). The Swiss Civil Code governs all aspects of the establishment, organization and dissolution of non-profit-making associations having legal personality 103/ (these are "associations" in the narrow civil law sense - other non-commercial associations that cannot acquire legal personality are treated in the same way as simple societies governed by the Code of Obligations).

146. The Constitution excludes from the field of protection associations whose purpose or means are unlawful or dangerous to the State. Whereas unlawfulness relates to the fundamental legal rules in force, the concept of danger to the State is more vague and its use could lead to abuse. However, the decisions of the Federal Tribunal indicate that only associations that set out to impose their views by means other than peaceful and democratic means must be prohibited. 104/ In such cases, the prohibition complies with article 17 of the European Convention on Human Rights and article 5 of the International Covenant on Civil and Political Rights. It should be added that article 275 ter of the Penal Code punishes the establishment of associations that are dangerous to the State. Article 56 of the Constitution sets out that it is incumbent on the cantonal authorities to take steps to deal with unlawful or dangerous associations. It is, however, accepted that associations that are dangerous to the federal State may be the subject of measures adopted by the federal authorities. In the case of associations in the sense of articles 60 et seq. of the Civil Code, article 78 of the Civil Code lays down that they shall be dissolved by a judge if their purpose is unlawful or immoral (article 88, paragraph 2, sets out the same rule for foundations in the sense of articles 80 et seq. of the Code). We can thus draw the following general rule: although the political authorities may prohibit an association, it is for the civil judge to pronounce its dissolution. Also, in order to complete the picture, it should be noted that article 99 of the Military Penal Code prohibits the formation of movements designed to undermine military discipline.

147. According to the jurisprudence of the Federal Tribunal, only individuals may avail themselves of freedom of association. 105/ Associations established in accordance with articles 60 et seq. of the Civil Code may nonetheless also unite to form federations or confederations which, in turn, constitute associations that qualify unrestrictedly for the same constitutional and legal guarantees as first-degree organizations. One should make the following

distinction. Private-law bodies corporate may, according to the literature, initiate recourse, in their own name, against a decision that limits the freedom of association of their members, or hinders their statutory activities or their right to form a federation. Public-law bodies corporate enjoy no freedom of association.

148. Although article 56 of the Constitution refers only to citizens, it applies also to foreigners, except with reference to political associations, in which area they may be subject to greater restricton than Swiss nationals (on this subject see sect. 8, paras. 127 to 138 above). From the decisions, the following rules may be derived: article 56 of the Constitution does not confer the right of admission to an association against the will of its members, even if the situation causes economic prejudice to the applicant. 106/ However, an individual does have some protection against unjustified exclusion. The individual has the right to be heard in advance, even if the statutes of the association allow for exclusion without specified grounds. 107/ If necessary, it should be ascertained whether refusal to admit an individual to an association on racial grounds is covered by article 4 of the Federal Constitution.

149. Limitations on freedom of association must, as in the case of any individual freedom, be set out in the law, be designed to safeguard public order and respect proportionality. The principle of proportionality is the basis on which the Federal Tribunal declared the requirement of prior authorization to form an association to be unconstitutional. 108/ Under no circumstances can the restriction of the freedom of association be justified on racial grounds.

150. In the Swiss democratic system, freedom of political association has a decisive role. The political parties are therefore in the forefront in qualifying for the guarantees set out in article 56 of the Constitution. At federal level there are about 16 parties, ranging from the left to the right of the political spectrum. The freedom of political association is also guaranteed by article 22 of the International Covenant on Civil and Political Rights. We have to go back to the troubled times of the Second World War to find instances of political parties being prohibited on the grounds that they were dangerous. The Federal Council banned the Communist Party in 1937 and the so-called "frontist" parties in 1940. During the same period, the Federal Tribunal accepted that the canton of Zurich could prohibit the formation of groups of a paramilitary nature and that the canton of Neuchâtel could ban the Communist Party. 109/ It is worth repeating that, today, such a measure could be applied only to the formation of a group setting out to impose its ideas outside the democratic process.

E. Economic, social and cultural rights (art. 5 (e))

151. For full and detailed information on the implementation of economic, social and cultural rights in Switzerland, see the initial report of Switzerland on the implementation of the 1966 International Covenant on Economic, Social and Cultural Rights (CCPR/C/81/Add.8, 26 May 1995).

1. Article 5 (e) (i): Right to work

152. The right to work is not recognized explicitly under Swiss law, but is protected by article 6 of the International Covenant on Economic, Social and Cultural Rights. The principle of contractual freedom, which applies to the choice of employment, covers the freedom to choose the other contracting party. Workers are thus free to choose their place of work, but prevailing legislation does not confer on them any subjective right to be hired.

153. Under article 328 of the Code of Obligations, 110/ "the employer, in his relations with labour, shall protect and respect the personality of the worker". This article thus protects foreigners against discrimination on the grounds of their "race", nationality or ethnic origin. Foreign workers are also protected against racially-motivated termination of their employment contract. This protection derives from article 336, paragraph 1 (a) of the Code of Obligations, which stipulates that dismissal is wrongful if imposed on one party for a reason inherent in the personality of the other party, unless such reason is connected with labour relations or, in some fundamental respect, is gravely prejudicial to labour within the enterprise. This provision covers discriminatory dismissal on such grounds as sex, "race", nationality, homosexuality or criminal record. 111/ The Federal Tribunal has ruled on the racially-motivated termination of an employment contract, stating that there was "no distinction to be drawn between directly and indirectly racially-motivated dismissal; it is unlawful in all cases". 112/

154. When an employer wrongfully terminates an employment contract, he must pay the worker compensation equivalent to not less than six months' wages, in addition to any damages. The employer has no legal obligation, however, to reinstate the dismissed worker in his enterprise. It is for the worker to prove to the courts that his contract was wrongfully terminated on racial grounds.

(a) Right to just and favourable conditions of work

155. Under Swiss law, workers are entitled to minimum conditions of work laid down in the Code of Obligations. This Code lists a number of provisions from which derogation is prohibited (art. 361), together with a list of provisions from which derogation is possible only in the workers' favour (art. 362). Provisions not included in either list come under dispositive law. It is thus possible to derogate from them in an individual or collective employment contract.

156. In order to be admitted to the labour market, foreigners must have a residence permit entitling the holder to work. Under the Ordinance of 6 October 1986 113/ limiting the number of foreigners, one of the conditions for granting this permit is that the employer must pay the foreign worker the same wage and accord him the same working conditions as are normally enjoyed by Swiss workers in the same locality and occupation (art. 9, para. 1). As regards the setting of wages and working conditions, paragraph 2 refers to the wages and conditions in effect for similar work in the same enterprise and industry, as well as to collective agreements and standard employment contracts.

(b) Right to equal pay for equal work and to just and favourable remuneration

157. Under Swiss law, the setting of wage levels is based on the principle of contractual freedom. Nowhere does the law set a minimum wage, and the parties to an individual employment contract are not bound by any figure, unless that freedom is restricted by a collective agreement. However, Swiss and foreign workers must receive equal remuneration, as provided in the above-mentioned Ordinance.

(c) Right to protection against unemployment

158. Unemployment insurance is compulsory for all gainfully employed persons. Any person who meets the conditions laid down in the Unemployment Insurance Act is entitled to receive unemployment benefits. This means that they must:

(a) Be totally or partially unemployed;

(b) Be domiciled in Switzerland (foreigners must be in possession of a valid establishment, residence or seasonal employment permit);

(c) Have completed compulsory education, but not have reached the age of entitlement to an old-age pension;

(d) Meet, or be exempted from, the conditions of contribution, i.e. have paid contributions for at least six months during the two years preceding unemployment registration. Persons unable to contribute for the following reasons: training, prolonged absence as a result of illness, accident or maternity or residence abroad, are exempted;

(e) Be fit for employment;

(f) Satisfy verification requirements.

159. Unemployment insurance is also intended to provide for imminent unemployment and combat existing unemployment through labour-market measures benefiting insured persons. If the labour office so requires, an unemployed person must, for example, attend recycling or further training courses. Other measures include allowances for persons starting work, travel assistance (employment away from home), on-the-job training and encouragement of self-employment.

2. Article 5 (e) (ii): Trade union rights

160. The freedom to organize is covered by the freedom of association guaranteed by article 56 of the Federal Constitution. Although this article uses the term "citizens", foreigners also enjoy this right. In Switzerland, freedom of association is also guaranteed by article 1 of the European Convention, by article 8 of the International Covenant on Economic, Social and Cultural Rights, by article 22 of the International Covenant on Civil and Political Rights and by ILO Convention No. 87 concerning freedom of association and protection of the right to organize. Any person has the right

to form a trade union, to join or leave an existing trade union or not to join any trade union. Associations whose aims or activities are dangerous to the State, however, are not protected by the freedom of association (art. 56 of the Federal Constitution).

161. Any eligible person considering himself injured by an act or norm of the State may invoke the freedom to organize guaranteed by the Constitution. As regards the actions of employers, private sector workers are protected against infringements of their trade union rights under the general protection of personality based on article 28 of the Civil Code. They also enjoy special protection under the Code of Obligations whereby termination of an employment contract is wrongful when the reason for it is the worker's membership or non-membership of a trade union or legitimate trade union activities (art. 336, para. 2 (b) of the Code).

3. Article 5 (e) (iii): Right to housing

162. The right to housing is not guaranteed explicitly by Swiss constitutional law. However, it is guaranteed by some cantonal constitutions and is also protected by article 11 of the International Covenant on Economic, Social and Cultural Rights. On the basis of the contractual freedom principle, an owner is free to choose the lessee. The latter is nevertheless protected against acts of racial discrimination by article 28 of the Civil Code which protects against unlawful infringements of individual rights.

163. Housing legislation also includes the provisions of the Code of Obligations concerning rental agreements, the Federal Act for improvement of housing in mountain areas 114/ and the Federal Act to promote construction and home ownership. 115/ This latter Act establishes a system of financial assistance for Swiss nationals and foreigners in possession of an establishment permit.

4. Article 5, (e) (iv): Right to health and social security

(a) Right to health and medical care

164. The cantons have general jurisdiction in health matters. The Confederation has jurisdiction only in certain limited areas (e.g. transmissible diseases, alcoholism, drug addiction). In general, the level of health of persons living in Switzerland is good and there is no discrimination with regard to access to care. With the entry into force of the new Sickness Insurance Act on 1 January 1996, 116/ medical insurance became compulsory for all persons domiciled in Switzerland. This new Act also strengthens solidarity and introduces a subsidy system to reduce the premiums of persons of modest means.

(b) Right to social security and social services

165. The Swiss federal social security system comprises various types of insurance, and Swiss nationals and foreigners are treated equally. Only the basic old-age, survivors' and disability insurance scheme - known in Switzerland as the "first pillar" - provides for different treatment of

foreigners as regards the conditions for obtaining benefits and the possibility of receiving them abroad. The tenth revision of the Old Age and Survivors' Insurance Act, to enter into force on 1 January 1997, will eliminate differences between the treatment of Swiss nationals and foreigners as regards the conditions governing eligibility for cash benefits. Moreover, the bilateral social security conventions concluded by Switzerland virtually eliminate all differences between the treatment of Swiss nationals and nationals of contracting countries. In 1992, this network of agreements covered 92 per cent of the foreigners in Switzerland.

166. Social assistance operates on a subsidiary basis and covers persons who are not contributors to the social insurance scheme, who are no longer contributors or whose income is insufficient. Responsibility for public assistance devolves on the cantons which often delegate implementation to the communes. Public assistance is directed at all persons in need; article 48 of the Federal Constitution lays down that "Needy persons shall be assisted by the canton in which they are living". It may happen that aliens holding annual permits have difficulty in renewing their permit if they and their families are long-term beneficiaries of public assistance.

V. EFFECTIVE PROTECTION AND REMEDIES (ART. 6 OF THE CONVENTION)

167. The general legal framework for the protection of human rights, including the dignity of the individual and the prohibition of racial discrimination, was described in detail in the core document submitted by Switzerland (HRI/CORE/1/Add.29, para. 43 et seq), along with the system of compensation and rehabilitation of victims. It may therefore be useful to refer to this document. It is simply pointed out here that, since 1 January 1995, under articles 261 bis of the Penal Code and 171c of the Military Penal Code, racial discrimination has been a criminal offence, thus providing victims with legal remedies.

VI. MEASURES CONCERNING EDUCATION AND TEACHING, CULTURE AND INFORMATION (ART. 7 OF THE CONVENTION)

A. Introduction

168. The information given in this report is general and is not exhaustive. The measures taken to implement the Convention in the relevant areas and the first experiences recorded will be described in more detail in future reports.

1. Federal Commission on Racism

169. On the accession of Switzerland to the International Convention on the Elimination of All Forms of Racial Discrimination, the Federal Council decided, on 23 August 1995, to establish a Federal Commission on Racism. Its terms of reference are to concern itself with racial discrimination, to work towards promoting better understanding between persons of different "races", colours, origins, ethnic or religious origins or religions and to combat all forms of direct or indirect racial discrimination attaching particular importance to effective prevention. The Commission began its work on 1 September 1995.

170. Its principal tasks include:

(a) Operational activities: The Commission engages in public relations and support activities, or initiates awareness or prevention campaigns;

(b) Advisory activities: It advises and supports the federal authorities (particularly in legislative matters and with regard to the implementation of legal measures, and in the preparation of positions and reports). It supports and advises private individuals (mediation role);

(c) Cooperation activities: It collaborates with the federal, cantonal and communal authorities and with organizations and groups concerned with the problems of racism;

(d) Scientific and analytical activities: It analyses racial discrimination from a scientific and ethical viewpoint, as well as analysing specific situations and their repercussions on individuals and society.

171. The Federal Commission on Racism has 19 members at the present time. It is made up of eminent persons from the fields of economics, politics, education and science, the churches and religious communities, representatives of minorities and cantonal and communal authorities and representatives of NGOs. It has two secretariat posts, split between three colleagues.

172. During its first year of operation, the Commission established its infrastructure, collected documentation and made efforts to promote research into racism in Switzerland. It also made approaches, on its own initiative, to the public authorities, the media and other entities and took a public stand on immigration policy. Contacts were also made with the cantonal governments and NGOs. In 1997, the Commission is planning a campaign on the theme of "Anti-racist motivation and anti-semitism" as well as activities in schools and in the workplace and with regard to the situation of people of the road.

173. In May 1996, the Commission took a public stance on Switzerland's immigration policy. It considered that current Swiss policy for admitting foreigners had indirect discriminatory effects on certain categories of the foreign population resident in Switzerland and in that sense could be considered contrary to the Convention. The Swiss Government intimated on a preliminary basis that it did not share the viewpoint of the Federal Commission on Racism. 117/

2. Federal Commission on Foreigners

174. In 1970, the Federal Council established the Federal Commission on Foreigners, whose mandate was to identify opportunities for improving the coexistence of Swiss and foreigners and to elicit and support initiatives in that connection.

175. The Commission's mandate has two main aspects: it contributes to making the Swiss population aware of the "otherness" and specific problems of the

foreign population, while it also supports initiatives providing foreigners with opportunities to come into contact with and integrate into Swiss society. During its 25 years of existence, it has published numerous declarations and statements of position and has implemented various projects. It is in continuous contact with numerous foreigners' associations and with immigration offices in the cantons and main cities. Its pamphlet, "Foreigners in the commune", published in collaboration with the umbrella association for Swiss towns and communes, helps the local authorities to carry out their responsibilities vis-à-vis the foreign population. It should be noted that tensions between the Christian and Muslim communities and the requirements of the international campaign against terrorism have led the Federal Department of Justice and the Police to pay particular attention in recent years to the integration of Muslim population groups. The Commission, along with representatives of the Muslim communities, is considering specific ways of improving willingness to engage in dialogue and framework conditions for integration. An update of the Commission's mandate on 6 March 1995 has further reinforced its role as an intermediary and mediator (ombudsman role) between the federal authorities and organizations actively involved with foreigners.

176. The Commission currently has 28 members, 6 of whom are of foreign origin. Its members come from the fields of economics and politics, the social services, the cantonal and communal authorities and the churches. It has a secretariat with five full-time posts.

3. Federal Commission for Refugees

177. The Federal Commission for Refugees was established in December 1983. For the most part it acts as an advisory body to the federal authorities. It examines the asylum and refugee situation from the standpoint of an overall immigration policy, and takes positions on this mutli-faceted political, legal, humanitarian and social problem. It comments on the Confederation's asylum policy and is consulted on relevant legislation. It transmits its recommendations to the Federal Council. The Commission currently has 22 members from the political, economics and social assistance spheres and the churches. It also includes representatives of the cantonal governments and administrations. The Federal Office for Refugees, the competent authority for asylum policy at the federal level, acts as its secretariat.

4. Collaboration between the three Commissions

178. Although the activities of the three Commissions concern related fields, they are quite distinct in terms of thematic stress and working methods. The Federal Commission for Refugees is a technical and scientific commission, while the Federal Commission for Foreigners is heavily oriented towards practical activities and close contacts with the grass roots. The Federal Commission for Refugees stresses prevention and creation of awareness. In order to create synergies and avoid overlaps in the activities of the three Commissions, close coordination is ensured by means of a coordinating committee.

B. Education and teaching

1. General information on the education system

179. Education in Switzerland is strongly permeated with federalism, which turns the Swiss education system into a mosaic of 26 different cantonal systems. The Constitution, where it touches on education, accords only limited powers to the Confederation. The cantons basically control pre-school, primary and junior secondary education, i.e. compulsory schooling. Where post-compulsory education (senior secondary and higher education) is concerned, the Confederation has broader, but still limited, powers. Vocational training is one of the few areas in which the Confederation has major competence (art. 34 ter of the Federal Constitution). The other sectors of senior secondary education (maturité - the Swiss school-leaving diploma, apprenticeship, higher education diploma), as well as higher education, come within the competence of the cantons or the joint competence of the Confederation and the cantons. Thus, the universities, with the exception of the two federal polytechnic colleges of Zurich and Lausanne, basically come under cantonal jurisdiction. The specialized higher colleges and higher education establishments are answerable partly to the cantons and partly to the Confederation. When legislative competence devolves on the Confederation, it often entrusts the cantons with carrying out the law. The cantons also have the right of consultation.

2. Activities of the Conference of Cantonal Directors of Education in combating and preventing racism

180. As said earlier, education and training are first and foremost a matter for the cantons. The Confederation therefore has limited influence on the effective prevention of racism in the education system, although the cantons' efforts in that regard are many and varied. They encourage intercultural understanding and endeavour to create a climate of tolerance among persons of different origins and also support private initiatives with similar aims.

181. On 6 June 1991, the Conference of Cantonal Directors of Education adopted a declaration to the effect that the universal problem of human rights, as well as coexistence in Switzerland with persons from other countries with different cultures, was a challenge to the education system. The Conference reasserted its adherence to the principles of the full integration of foreign children and young people, its esteem for their cultural differences and its resolve to take them fully into account. It observed that schools, at all levels, had the duty to train their pupils in respect for others, tolerance among religious, ethnic, social and other groups and peace among peoples. Teaching and education in schools should foster pupils' awareness of the visible and hidden faces of racism, encourage them to combat them and ensure that they are able to meet foreigners individually and in groups openly and without fear. These principles should be taken into consideration in the initial and further training of teachers and in the preparation of syllabuses and teaching materials. On 24 October 1991, the Conference sent the cantons new recommendations for educating children of foreign mother tongue, in which the basic principle is not the assimilation, but the integration and participation, of children of foreign mother tongue, based on a "positive discrimination" approach.

182. In a report entitled "Racisme et ecole" (Racism and the school), the education commission of the Conference of Cantonal Directors of Education stated, further to the Conference's declaration of 6 June 1991, that important tasks devolved on the education and training system in the context of the campaign against racism and racial discrimination. Creating awareness of the various forms of unconscious racism is an important objective of the education system, along with learning to have the courage to face up to one's own or others' racist feelings in order the better to deal with them. The report also contains a list of measures in the areas of teacher training, continuing education and advice to teachers, school authorities and teachers' organizations to help in attaining the desired objective. The cantons are also invited to organize school structures and syllabuses and teaching aids so as to check racist trends. Intercultural education - a key element of education in a multicultural society - is a valuable teaching aid in preventing racial discrimination and in awakening in children an understanding of minorities and respect and tolerance in their relations with others coming from different cultures.

183. The practical implementation of the principles of anti-racist education in Switzerland, however, comes within the competence of the cantons, which have come out in favour of the International Convention on the Elimination of All Forms of Racial Discrimination and are prepared to take the necessary measures. These include the improvement and intensification of the education of children of foreign mother tongue, especially in learning the local language; stressing intercultural education in the initial and further training of teachers; and providing more help for foreign-language speakers in choosing and learning a trade. Legal provisions, recommendations or guidelines aimed at better integration of children of different cultural origins exist in many cantons. The Centre for Information and Documentation on Questions of Training, which is part of the secretariat of the Swiss Conference of Cantonal Directors of Education, maintains a collection of these legal texts, which give a detailed picture of cantonal training policies in the context of combating racism. However, a detailed description of all the activities in this field is beyond the scope of this report.

3. Activities at the federal level

184. As has already been said, the Confederation's role in the campaign to combat racism in the education system is fairly limited because of Switzerland's federal structure. The secretariat of the Swiss National Commission for UNESCO contributes, however, by supporting studies of intercultural relations and by organizing seminars or exhibitions to which it invites participants from other States, especially developing countries. The secretariat of the Commission has also established a group of associated schools which it supplies with educational material designed to enhance awareness of other cultures.

185. The Confederation also supports scientific research, one theme of which is the concept of the multicultural society. As part of its national research programmes, the National Scientific Research Fund, financed by the Confederation, has supported a great many projects (e.g. the programmes entitled "Cultural diversity and national identity" and "Migrations and cultural relations"), one of the specific goals of which is a better

understanding of the phenomenon of migrations and intercultural relations. Another objective of these projects is to support the public authorities, organizations or private individuals who are active in the area of migrations and intercultural relations by making available appropriate documentation and guidelines for action. Lastly, by awarding scholarships to foreign students and artists, the Confederation contributes to maintaining an active presence of other cultures in Switzerland.

C. Culture

186. Competence in cultural matters also devolves on the cantons and communes. The Confederation is only intermittently involved since the Constitution contains no provisions empowering it to promote culture. The cantons, and particularly the large cities, organize numerous cultural events, which contribute to improving intercultural understanding and to some extent to eliminating and preventing racist tendencies. A systematic description of these events is not, however, possible in the context of this report.

187. At the federal level, the "Pro Helvetia" Foundation is active both in Switzerland and abroad; it is financed by the Confederation. It does not confine itself exclusively to supporting cultural creativity in Switzerland, but also promotes cultural exchanges between the four linguistic and cultural regions (German-, French-, Italian- and Rhaeto-Romansch-speaking) and between these regions and the population of foreign origin. The Foundation's main area of activity, however (which accounts for approximately two thirds of its resources), is the development of cultural relations with other countries, of which the North/South cultural exchange programmes are an important part. Pro Helvetia's activity is especially intensive in the Central and Eastern European countries. In four of these (Poland, Czech Republic, Slovakia and Hungary) it has opened five centres to encourage East/West cultural exchanges and support projects in situ.

188. In its promotion of the cinema, the Confederation gives particular importance to cooperation with developing countries and the distribution in Switzerland of films from those regions. For example, it supports the Fribourg Film Festival, which provides a venue for third-world film-makers to present their work. The Locarno Festival, Switzerland's major and internationally acclaimed festival, shows films from everywhere in the world and from different cultural environments. This is also a way of contributing to better intercultural understanding. As for film production in Switzerland, the Confederation supports projects which deal with the coexistence of the indigenous and foreign populations or problems in North/South relations.

189. Switzerland has traditionally been regarded as quadrilingual. Following the high level of immigration of the last few decades, it has now become a plurilingual State. Swiss language policy, however, concerns only the four national languages (German, French, Italian and Rhaeto-Romansch). With a view to maintaining the quadrilingualism, the Confederation gives financial support to the cantons of Ticino and Graubünden. In the bi- and tri-lingual cantons, the coexistence of linguistic groups is the subject of various regulations which take into account both the unity of the canton and the interests of the linguistic minorities.

190. Lastly, mention should be made of the new article of the Constitution concerning languages, adopted by the people and the cantons on 10 March 1996. This will allow the Confederation to promote its goal of improving understanding among the four national linguistic groups. The Confederation financially supports the private cultural organizations which are active in this area and in that of relations between the indigenous and the foreign populations. It also contributes in this way to efforts to promote intercultural understanding and tolerance.

191. In socio-cultural matters, the Confederation is active mainly with regard to a policy for young people (this, too, basically comes within the competence of the cantons). Institutions whose raison d'être is to promote exchanges between young people of different regions and even beyond national frontiers thus receive financial support, in the context of extramural activities, over which the Confederation has jurisdiction. Such exchanges without a doubt make an important contribution to combating racist and nationalist prejudices. Support is also given to youth organizations which encourage the participation of young foreigners in their activities.

192. The Confederation's involvement has essentially been in the European Youth Campaign against Racism, Xenophobia, Anti-Semitism and Intolerance, the idea of which was launched by the Heads of State and Government of the States members of the Council of Europe at a summit meeting in Vienna in October 1993. The Federal Council has established a National Commission to coordinate activities at the national, regional and local levels and to support, through a special fund, young people's projects aimed at making the public at large aware of the need for a more tolerant and more open society, and at encouraging young people to become involved in the campaign against all forms of racism, xenophobia and intolerance.

D. Information

193. In the information sphere, it should be borne in mind that independence in programming and the freedom of the press are both guaranteed by the Federal Constitution (arts. 55 and 55 bis). This means that the Confederation cannot directly influence radio or television programming or the content of articles in the press. Similarly, radio and TV programme planners are not in theory bound by federal, cantonal or communal guidelines. They must, however, work within the relevant legal framework.

194. The press in Switzerland (daily and weekly newspapers and magazines) is organized on a purely private basis. It is sparsely regulated compared with the electronic media. There is no censorship. However, there are criminal and civil provisions for the protection of the individual, which are relevant in the context of the campaign against racism. The new article 261 bis of the Penal Code, under which the dissemination of racist ideologies and incitement to racial hatred or discrimination based on racial origin are punishable offences, applies to the press.

195. Radio and television producers are subject to the Federal Radio and Television Act 118/ which contains the main pertinent rules and objectives. In the context of the campaign against racial discrimination, the law requires radio and television to take account of the diversity of the country and its

population. In the framework of these general principles, the autonomy and independence of the radio and television stations are firmly rooted in the law.

196. Production of radio or television programmes requires a licence which sets out the general principles governing programming. The electronic media in Switzerland can be described as consisting of a private sector financed by advertising, and a semi-public sector, financed by licence fees. However. it should be noted that, while private local radio stations do exist, for the time being there are practically no private television producers in Switzerland, except in the major towns.

197. The semi-public sector is a corporation covering the whole of Switzerland, the Société suisse de radiodiffusion (Swiss Broadcasting Corporation) which is responsible for broadcasting programmes to each of the four linguistic communities. Each of the three most important linguistic regions (German, French and Italian-speaking) receives three different radio programmes, making a total of nine full programmes. The first programme in each language can also be received throughout Switzerland. The Rhaeto-Romansch language programme is broadcast in the canton of Graubünden (where its audience is mainly concentrated), but may be received in various towns outside the canton by means of cable transmission. The three main linguistic regions have their own full television programmes, each of which must take due account of the needs of the Rhaeto-Romansch-speaking population and devote some programmes to it.

198. Under article 3 of the licence granted to the Swiss Broadcasting Corporation by the Federal Council on 8 November 1992, radio and television programmes must promote mutual understanding and exchanges between the various regions, linguistic communities and cultures in Switzerland and pay particular attention to the population of foreign origin. This means that programmes directed at combating and preventing racism are totally in keeping with the spirit of the Corporation's mandate. In this connection, fruitful cooperation has developed between the Federal Commission for Foreigners and the Corporation. The purpose of these contacts is to take account of the interests of foreigners in Switzerland in radio and television programmes. The programmes "Plaza. Leben und Reden mit Andern" and "Zapp Monde" of the first Swiss radio channels in German and French are aimed at promoting better understanding between the foreign and the indigenous populations. The former is weekly, while the latter is broadcast five days a week. More generally, the Federal Commission for Foreigners and the Swiss Broadcasting Corporation are working to define an overall concept applicable to broadcasts for and about foreigners in Switzerland.

199. The law concerning advertising prohibits any advertising that is not consistent with decent behaviour, condones or encourages acts of violence or impugns the honour of third parties. Mention should be made here of the Council of Europe's European Convention on Transfrontier Television (1989), 119/ which stipulates that all transfrontier services must, in their presentation and content, respect the dignity of the human being and the fundamental rights of others, and in particular must not incite to racial hatred.

200. Although the Confederation is not permitted directly to influence radio and television programmes and thus may not use them to conduct its own anti-racism campaigns, it may prepare information designed to combat certain prejudices in a form which meets the needs of the media, and thus indirectly influence the information supplied by the electronic media and the press. This type of approach was adopted in the context of the Council of Europe's youth campaign for which various information aids were developed, along with material to promote public awareness, with the support of many public services. Although the dissemination of this material depended to a large extent on the goodwill of the media, it should be noted that the media in fact repeated the information on numerous occasions, thus reaching out to wide sectors of the population.

201. Lastly, it should be mentioned that many public bodies publish information brochures, the content of which is fully compatible with the positive measures prescribed by the Convention. For example, the magazine Entwicklung/Développement is published jointly by the Directorate for Development and Cooperation of the Federal Department of Foreign Affairs and by the Federal Office of External Economic Affairs of the Federal Department of the Public Economy. The Federal Commission for Foreigners publishes the trilingual magazine Rondo which is devoted to questions concerning the coexistence of immigrants and indigenous Swiss. The Federal Office for Foreigners also publishes a magazine concerned with the problems of refugees, entitled Asylon. The Federal Youth Commission has also made an analysis of the phenomenon of racism among young people. The results were published in an interim report of 1991 on the situation of young people in Switzerland.

Notes

1/ See the list of 10 annexes at the end of this document. These annexes are available for consultation in the files of the Centre for Human Rights.

2/ Average resident population. Source: Federal Statistical Office, Statistique annuelle sur l'état de la population (ESPOP).

3/ Recueil systématique du droit fédéral (RS 142.20).

4/ RS 142.215.

5/ The number of initial one-year residence permits entailing the pursuit of a gainful occupation is set in the quotas allocated at the cantonal and federal levels; the cantons and the Confederation are thus entitled to issue a limited number of such residence permits per year.

6/ For a profile of Swiss federalism from the standpoint of the protection of minorities, see the report submitted by Professor G. Malinverni of Geneva University to the European Commission for Democracy through Law (document CDL (91) 21 of 8 October 1991).

7/ Source: "Fahrende Menschen in der Schweiz" (Travellers in Switzerland), Caritas Suisse, Documentation 1/88, 1988, p. 5.

8/ Müller, Jörg Paul, "Die Grundrechte der schweizerischen Bundesverfassung" (The basic rights of the Swiss Confederation), Bern, 1991, p. 214.

9/ See ATF (Recueil des arrêts du Tribunal fédéral) 113, Ia. 10, and the above-mentioned references to case law.

10/ Müller, Jörg Paul, op. cit., loc. cit.

11/ ATF 68, II 377ss.

12/ ATF 93 I 1.

13/ This legislation is commented upon below.

14/ See paragraphs 169-173 below on the mandate and activities of the Federal Commission on Racism.

15/ See paras. 29-31 above.

16/ For a historical overview, see "Fahrende Menschen in der Schweiz" (Travellers in Switzerland), pp. 7-13 (see note 7 above).

17/ Figures taken from "Hilfswerk Kinder der Landstrasse" (The aid organization Children of the Road), Cantonal Working Group, report and proposal of 8 May 1987, p. 6.

18/ For further details, see part II, chapter 1, on article 2 of the Convention (paras. 48-59), below.

19/ Müller, J.-P., "Die Grundrechte der schweizerischen Bundesverfassung" (The basic rights of the Swiss Confederation), Bern, 1991, p. 214.

20/ Message from the Federal Council of 2 March 1992 on the accession of Switzerland to the 1965 International Convention on the Elimination of All Forms of Racial Discrimination and the related revision of penal law, 521, Ff 1992 III 265 et seq.

21/ Müller, G., "Commentaire de la Constitution fédérale" (Commentary on the Federal Constitution), Art. 4, Rz. 30; Haefliger, A., "Alle Schweizer sind vor dem Gesetze gleich" (All Swiss are equal before the law), Bern, 1985, p. 60 et seq.

22/ Message from the Federal Council of 2 March 1992 on the accession of Switzerland to the 1965 International Convention on the Elimination of All Forms of Racial Discrimination and the related revision of penal law, 521, Ff 1992 III 265 et seq.

23/ See the position taken by the Federal Commission on Racism on 6 May 1996 (paras. 169-173 below).

24/ Müller, G., "Commentaire de la Constitution fédérale" (Commentary on the Federal Constitution), Art. 4, no. 26; Wildhaber, L., "Gedanken zur Rassendiskriminierung, Rechtsgleichheit und Drittwirkung im schweizerischen Recht" (Thoughts on racial discrimination, equality before the law and public right of action under Swiss law), in ZBI 72/1971, p. 465 et seq.

25/ ATF (Compendium of Federal Tribunal Decisions) 111 II 253 and references.

26/ RS (Systematic Compendium of Federal Laws) 210.

27/ RS 311.0.

28/ A general commentary on the application of articles 261 bis of the Penal Code and 171 (c) of the Military Penal Code was published in October 1996. M.A. Niggli, Rassendiskriminierung: Ein Kommentar zur Aritkel 261 bis ZGB und Artikel 171c MStG (Zurich, 1996).

29/ RS 0.101.

30/ RS 0.103.2.

31/ ATF 93 I 1.

32/ Kolz. A., "Article 58", in "Commentaire de la Constitution fédérale", vol. 3.

33/ ATF 39 I 84. A court which is appointed by the cantonal Parliament in order to handle a specific case, composed of five judges without alternates, commits an arbitrary act if four judges decide to request disqualification of the fifth one (Federal Tribunal decision of 6 July 1988).

34/ ATF 105 Ia 178.

35/ See the core document of Switzerland (HRI/CORE/1/Add.29) and ATF 117 Ia 381.

36/ For example, ATF 89 I 98.

37/ ATF 90 I 36.

38/ RS 161.1.

39/ RS 161.5.

40/ See, in particular, the 22 June 1994 message from the Federal Council concerning popular initiatives "for a reasonable policy on asylum" and "against clandestine immigration" (Feuille fédérale (Official Journal of the Confederation) 1994 III 1483-1487).

41/ In the case of elections to the National Council, each canton has a number of seats proportionate to the number of citizens residing there. A system of proportional representation is used in elections. See "core document".

42/ See core document of Switzerland (HRI/CORE/1/Add.29).

43/ Nowadays, only the canton of Schaffhausen penalizes abstention, for which it imposes a fine of 3 francs.

44/ See comments below on this point.

45/ Thus, at the federal level, no other grounds are admitted for deprivation of civic rights (such as unsuccessful seizure, a criminal conviction, etc.). The cantons remain free, however, to invoke such grounds for deprivation of civic rights in the case of cantonal and communal elections.

46/ ATF 41 I 58.

47/ ATF 116 Ia 359, referred to above in relation to article 3 (paras. 61 to 63).

48/ E. Grisel, "Commentaire de l'article 74 de la Constitution", in Commentaire de la Constitution fédérale de la Confédération suisse, Basel, Zurich, Bern, vol. III, para. 45, 1988.

49/ Despite the letter of article 75 of the Federal Constitution, the issue at stake is that of conflict of duties rather than a condition of eligibility, so that a member of the clergy may legitimately be elected provided he does not perform his religious functions (see art. 18 of the Federal Act concerning Political Rights). For the other conflicts of functions at the federal level, see below.

50/ Writers have expressed reservations concerning the compatibility of the laity provision with article 26 of the International Covenant on Civil and Political Rights. See Mock, P., "Quelques réflexions sur les réserves déposées par la Suisse lors de la ratification du Pacte international relatif aux droits civils et politiques", in Pratique juridique actuelle (AJP/PJA) 1994, pp. 984 et seq. and, in particular, p. 992.

51/ Paragraph 19 of the Constitution of Thurgau (RS 131.228).

52/ However, the Federal Tribunal has decided that membership of the bar association may not be prohibited for foreigners purely on the ground of nationality; they must be admitted if they can demonstrate familiarity with the political and economic situation of Switzerland (ATF 119 Ia 35 and a decree of 27 April 1993 in the case of Tim Brockmann v. Council of State of the Canton of Geneva).

53/ RS 172.221.10.

54/ ATF 108 Ia 248, c.1.

55/ D. Mahalic, "The Limitation provisions of the International Convention on the Elimination of All Forms of Racial Discrimination", in HRQ 9/1987, pp. 74 et seq.

56/ RS 351.1.

57/ RO 1996 I 1.

58/ RS 661.

59/ See ATF 111 Ib 70, article 7 of the International Covenant on Civil and Political Rights, article 3 of the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment, article 3 of the European Convention on Human Rights.

60/ RS 141.0.

61/ Initial report of the Swiss Government to the Human Rights Committee (CCPR/C/81/Add.8, paras. 449 and 450, 26 May 1995).

62/ RO 1995 II 1126.

63/ ATF 109 II 273.

64/ In this connection see O. Guillod, "La liberté de se marier" in Présence et actualité de la Constitution dans l'ordre juridique, Basel, 1991, pp. 97 et seq., in particular pp. 110 and 111.

65/ ATF 73 I 167.

66/ The preliminary draft amendment of the Civil Code provides for the abolition of the prohibition of marriage between aunt and nephew or uncle and niece.

67/ Civil law does not in fact regulate religious marriage, which is free.

68/ RS 291.

69/ RS 211.412.41.

70/ ATF 113 Ia 307.

71/ Same decision. See also the decision of the Second Court of Public Law of the Federal Tribunal of 18 June 1993, in A. and M. v. State Council of the Canton of Zurich, ruling that the constitutional guarantee also protects minority beliefs within a religion (ATF 119 Ia 178). There are no statistics regarding the membership of these minority religions. For the religious breakdown of the resident population in Switzerland, see core document of Switzerland (HRI/CORE.1/Add.29).

72/ ATF 104 Ia 84.

73/ RS 321.0.

74/ For 1995 and 1994, the statistics for cases of refusal to perform military service were as follows: of 256 refusals to serve in 1995 (239 in 1994), 177 or 69 per cent (162 or 68 per cent) were validly based on a conflict with fundamental ethical values; 75 (77) sentences of imprisonment and 168 (153) community service orders were imposed and in 9 (9) cases the soldier was permitted to serve in an unarmed capacity.

75/ ATF 102 Ia 481.

76/ ATF 97 I 120.

77/ ATF 116 Ia 252.

78/ Decision of the Second Court of Public Law of the Federal Tribunal of 18 June 1993, in A. and M. v. State Council of the Canton of Zurich (ATF 119 Ia 178).

79/ ATF 66 I 158. A recent decision rules that the dispensation regarding religious education must, however, be effective and that it is not in accordance with the Constitution to compel a pupil who has been excused biblical history lessons to remain in the room in which such teaching is given. Decision of the Second Court of Public Law of the Federal Tribunal of 19 January 1993.

80/ See H. Plotke, "Schweizerisches Schulrecht", chap. 6, Paul Haupt Verlag, Bern, 1979.

81/ ATF 23 II 1368.

82/ ATF 91 I 485 and 96 I 586. The Federal Constitution expressly guarantees, in article 57, the right of petition, which is also available to foreigners.

83/ ZBl 1982, p. 222.

84/ ATF 96 I 592, mentioned above.

85/ RS 784.10.

86/ ATF 108 Ia 277 and 107 Ia 305.

87/ There is a lot of criticism by legal writers, particularly by M. Rossinelli, "Les libertés non-écrites" (Unwritten freedoms), Payot, Lausanne, 1987, pp. 163 et seq., and D. Barrelet, "Droit suisse des mass média" (Swiss law on the mass media), second edition, Staempfli, Bern, 1987, pp. 44 et seq.

88/ Bound in this case by the principle of equal treatment (ATF 107 Ia 312).

89/ The Military Penal Code contains similar provisions, as well as a number of other specifically military requirements, such as article 98 of the Military Penal Code (provocation and incitement to dereliction of military duty).

90/ This permit is generally granted only after continuous residence on Swiss territory for several years.

91/ ATF 105 Ia 93.

92/ ATF 107 Ia 294.

93/ ATF 96 I 218.

94/ ATF 58 I 84.

95/ ATF 100 Ia 392. However, this is not the case of meetings in a hall or on private property: ATF 107 Ia 300.

96/ In Swiss law, the "general police clause" enables the authority to issue specific orders or decisions in the absence of a legal basis, when the security of the State, property or persons is clearly threatened. Its application is restrictive and the authority may only have recourse to it as ultima ratio if adequate measures cannot be taken on the basis of existing law. As regards the use of the public domain, in particular, recourse to this clause is justified by the fact that it is scarcely possible to foresee all causes of disturbance in an abstract and indeterminate manner.

97/ ATF 105 Ia 480, ATF 105 Ia 21.

98/ ATF 107 Ia 226, ATF 108 Ia 300.

99/ ATF 99 Ia 693 and 96 I 590.

100/ On this point, G. Malinverni, "La liberté de réunion" (Freedom of assembly), Geneva, 1981, p. 148 et seq.

101/ ATF 103 Ia 314.

102/ RS 0.103.1.

103/ Article 60, paragraph 1, of the Civil Code reads as follows: "Political, religious, scientific, artistic, charitable, recreational or other associations that have no economic purpose acquire personality when they express in their statutes the desire to be organized corporatively."

104/ ATF 100 Ib 18. The principle of proportionality applies: the measures will be more or less severe depending on the nature and seriousness of the unlawfulness or danger. The use of certain unlawful means may, for example, be punished only by a fine. However, if the purpose or if all the means used are vitiated, the association will be prohibited. See J.-F. Aubert, "Traité de droit constitutionnel suisse" (Treatise on Swiss constitutional law), vol. II, Neuchâtel, 1967, p. 753.

105/ ATF 100 Ia 286 and 97 I 121.

106/ ATF 86 II 365.

107/ ATF 85 II 543 and 90 II 347.

108/ ATF 96 I 229.

109/ ATF 60 I 349 and 63 I 281.

110/ RS 220.

111/ Decision of the Federal Tribunal of 13 January 1992, reproduced in SJ 1993, p. 357.

112/ Ruling of the First Civil Court of 11 November 1993.

113/ RS 823.21.

114/ RS 844.

115/ RS 842.

116/ RO 1995 II 1328.

117/ See the explanations concerning the reservation entered by Switzerland on behalf of its immigration policy (paras. 52-56).

118/ RS 874.40.

119/ RS 0.784.405.

List of annexes*

Annex 1	Resident population according to selected characteristics (origin and sex)
Annex 2	Resident population according to selected characteristics (occupation, level of education, origin and sex)
Annex 3	Foreigners by country of origin, residence status and sex
Annex 4	Resident population by commune and by territorial division, according to main language
Annex 5	Foreigners by country of origin and religious affiliation
Annex 6	Number of actively employed foreigners by social and professional categories and duration of employment (in German)
Annex 7	Social and professional categories and types of household: Swiss (in German)
Annex 8	Social and professional categories and types of household: foreigners (in German)
Annex 9	Number of foreigners since 1900: breakdown by sex and country of origin
Annex 10	Religious affiliation (resident population according to census data since 1900 by country of origin, sex and religious affiliation in absolute figures) (in German)

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* Annexes available for consultation in the archives of the Centre for Human Rights.